

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: September 22, 1987.
Federal Deposit Insurance Corporation.
Margaret M. Olsen,
Deputy Executive Secretary.
[FR Doc. 87-22284 Filed 9-23-87; 1:22 pm]
BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:05 a.m. on Tuesday, September 22, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to the possible failure of certain insured banks.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters

in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 22, 1987.
Federal Deposit Insurance Corporation.
Margaret M. Olsen,
Deputy Executive Secretary.
[FR Doc. 87-22280 Filed 9-23-87; 1:17 pm]
BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: None at this time.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, DC.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6679).

CHANGES IN THE MEETING: The Bank Board Meeting Previously Scheduled to start at 8:00 a.m., has been changed to start at 9:30 a.m., on Friday, October 2, 1987.

Nadine Y. Washington,
Acting Secretary.
No. 13, September 23, 1987.

[FR Doc. 87-22303 Filed 9-23-87 3:10 pm]
BILLING CODE 6720-01-M

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 9:30 a.m., Monday, October 5, 1987.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, DC.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6679).

MATTERS TO BE CONSIDERED: Amendments to regulations concerning uniform accounting standards, a policy statement on troubled debt restructuring, amendments to regulations concerning capital forbearance, and amendments to regulations concerning minimum capital requirements.

John M. Buckley, Jr.
Secretary.

No. 12, September 23, 1987.

[FR Doc. 87-22304 Filed 9-23-87; 3:10 pm]
BILLING CODE 6720-01-M

MERIT SYSTEMS PROTECTION BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 34865, September 15, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, September 23, 1987.

CHANGE IN THE MEETING: Postponed.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653-7200.

Date: September 22, 1987.

Robert E. Taylor,
Clerk of the Board.
[FR Doc. 87-22203 Filed 9-23-87; 8:50 am]
BILLING CODE 7400-01-M

Corrections

Federal Register

Vol. 52, No. 186

Friday, September 25, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Bureau of Standards

[Docket No. 61003-7137]

Approval of Federal Information Processing Standards Publication 29-2; Interpretation Procedures for Federal Information Processing Standards for Software

Correction

In notice document 87-21095 beginning on page 34696 in the issue of Monday, September 14, 1987, make the following correction:

On page 34697, in the first column, under paragraph 6, in the second line, "(date)" should read "September 14, 1987".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F-0257]

Filing of Food Additive Petition; Ferro Corp.

Correction

In the issue of Thursday, September 17, 1987, on page 35187, a correction to FR Doc.87-20267 appeared. The second paragraph was inaccurate and should have appeared as follows:

In the first column, in **SUPPLEMENTARY INFORMATION**, in the seventh line, "\$ 728.2010" should read "\$ 178.2010".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8158]

Income Taxes; Tax on Unearned Income of Certain Minor Children

Correction

In rule document 87-20459 beginning on page 33577 in the issue of Friday, September 4, 1987, make the following corrections:

§ 1.1(i)-1T [Corrected]

1. On page 33579, in the third column, in paragraph A-6, in the fourth line, "income" was misspelled.

2. On page 33581, in the second column, in *Example (6)*, in the fourth line, "\$69,000" should read "\$69,900".

BILLING CODE 1505-01-D

Environmental Protection Agency

Friday
September 25, 1987

Part II

**Environmental
Protection Agency**

40 CFR Parts 85 and 600

Air Pollution Control; Importation of
Nonconforming Motor Vehicles and
Motor Vehicle Engines; Final Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 85 and 600**

[FRL 3176-8]

Air Pollution Control; Importation of Nonconforming Motor Vehicles and Motor Vehicle Engines**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA is exercising its discretion to revise portions of EPA regulations at 40 CFR 85.1501 et seq., which regulate the importation of nonconforming motor vehicles and motor vehicle engines ("nonconforming vehicles"). EPA also is acting to revise portions of 40 CFR Part 600 specifying the manner in which fuel economy data for nonconforming vehicles are generated. Nonconforming vehicles are ones not conforming with Federal emission requirements at the time of conditional importation. (Excluded from this definition are vehicles entered under EPA-approved catalyst and O₂ sensor control programs.)

Today's action, except for certain specified exceptions, permits only independent commercial importers (ICI) who hold valid certificates of conformity issued by EPA to import nonconforming vehicles. In general, individuals who previously could import a nonconforming vehicle directly now will be required to arrange for importations through certificate holders. Certificate holders will be responsible for assuring that subsequent to importation the vehicles are properly modified and/or tested to comply with emission and other requirements over their useful lives. The certificate holder also will be responsible for recalls, maintenance instructions, emission warranties, and vehicle emission labeling and for compliance with fuel economy requirements.

EPA is also announcing the abolition of its "five model year old personal use" policy which permitted a first-time individual importer to import a nonconforming vehicle over five model years old for his/her own personal use without the need to demonstrate that such vehicle complied with Federal emission standards. Abolition of this policy is needed to eliminate the abuses associated with the policy and the significant numbers of noncomplying vehicles that were being imported under this policy.

The Agency is taking these actions to improve the emissions compliance of these nonconforming vehicles and the

administrative efficiency of the imports program. As a separate matter, EPA is considering strengthening its "small volume" certification procedures and intends to publish a Notice of Proposed Rulemaking on that subject at some future date.

DATES: Abolition of the five model year old policy and the provisions of these regulations promulgated today will be effective for vehicles imported beginning on July 1, 1988.

ADDRESSES: Copies of materials relevant to this rulemaking proceeding are contained in public Docket EN-79-9 at the U.S. Environmental Protection Agency, Central Docket Section, Room 4, South Conference Center (LE-131), Waterside Mall, 401 M Street, SW., Washington, DC 20460, and are available for review weekdays between 8:00 a.m. and 3:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mary T. Smith, Chief, Manufacturers Programs Branch (202/382-2500) or Claude Magnuson, Chief, Investigation/Imports Section (202/382-2542), Manufacturers Operations Division (EN-340F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:**I. Background****A. EPA's Current Regulatory Program**

The regulations governing EPA's program providing for the importation of nonconforming vehicles were originally promulgated in 1972 pursuant to the Clean Air Act, as amended 42 U.S.C. 7401 et seq. ("the Act"). Section 203 of the Act prohibits the importation of any new motor vehicle or engine (hereinafter "vehicle") not covered by a certificate of conformity unless it is exempted by the Administrator or otherwise authorized jointly by EPA and U.S. Customs Service (Customs) regulations, 42 U.S.C. 7522. Such regulations must be appropriate to insure that imported nonconforming vehicles will be brought into conformity with the applicable emission standards. The authority to allow importation of nonconforming vehicles is discretionary with EPA and Customs.

The regulatory framework of EPA's current program, contained in EPA regulations at 40 CFR 85.1501 et seq. and in Customs regulations at 19 CFR 12.73, generally permits the conditional importation of a nonconforming vehicle, for 90 days, by any person provided that a bond is posted with Customs and the vehicle is brought into conformity with EPA emission requirements, 40 CFR

85.1504. This may be done by either modifying the vehicle to make it identical to a vehicle certified for sale in the U.S. or by successfully testing the vehicle in accordance with the Federal Test Procedure (FTP) at 40 CFR Part 86. Under the second option, which is more commonly used, some modification is usually necessary before the imported vehicle can pass the FTP (the "modification and testing" approach). These two methods of emissions demonstration have traditionally comprised a little less than one-half of the nonconforming imported vehicles.

Certain exceptions to emissions compliance demonstration are recognized by EPA. These exceptions are discussed in more detail in Parts IV and VI below. Of particular note is the five model year old exception which has traditionally accounted for almost one-half of the nonconforming imports. This enforcement policy permits a first-time individual importer to import one nonconforming vehicle at least five model years old for personal use without demonstrating emissions compliance.

B. Background of EPA's Regulatory Revision Effort

Today's action represents the culmination of a lengthy rulemaking process EPA has undertaken to examine and evaluate revisions to its imports regulations.

The rulemaking process has involved publication of three notices for public comment, each of which proposed various revisions to the imports regulations. The most recent, and the notice providing most of the proposed regulatory language for today's action, was a Supplemental Notice of Proposed Rulemaking (SNPRM) which was issued on September 9, 1985 (50 FR 36838). Numerous written comments were received in response to this notice and two public hearings were held. The two earlier notices were a Notice of Public Workshops (Workshops Notice) issued on November 4, 1983 (48 FR 50902) and a Notice of Proposed Rulemaking (NPRM), issued on June 21, 1980 (45 FR 48812). Many (65) written comments were received in response to the Notice of Public Workshops and two public workshops were held. Over 370 written comments were received in response to the 1980 NPRM and one public hearing was held. EPA has summarized and analyzed all significant comments to these three notices in a document entitled "Summary and Analysis of Comments Pertaining to the Proposed Rulemaking Entitled 'Importation of Motor Vehicles and Motor Vehicle

Engines under the Clean Air Act" (SAC) and has placed the SAC in the public docket. The basis for EPA's action includes the summary and analysis of comments and EPA's response thereto contained in the SAC. Comments received, together with EPA submitted information in the docket, are referred to throughout this document as "the record."

As explained in previous notices, the lengthy process of rulemaking was undertaken at a time of great change and uncertainty in the Imports program. EPA delayed final action early on in the rulemaking process after consideration of the comments received to the NPRM (see Part V), proposed Congressional revisions to the Act which would have significantly affected the provisions applicable to the importation of nonconforming vehicles, and needed additional analyses. In the interim, EPA made various changes to its enforcement procedures and policies to reduce its resource burden, including allowing first-time importers to import one nonconforming vehicle at least five model years old at time of importation, without having to bring the vehicle into conformity. See, e.g., 48 FR 16485 (April 18, 1983). Since then the rulemaking process has provided EPA with an opportunity to consider various options and issues, the resolution of which has resulted in today's action.

II. Summary Description of Today's Action

By today's action, EPA is exercising its discretion to adopt a program, part of which will be phased-in between 1988 and 1993 which substantially changes both the manner in which nonconforming vehicles can be imported and the manner by which emissions compliance can be demonstrated.¹ EPA has adopted a program that is an outgrowth of several previously proposed options and comments on those options. It provides, with some exceptions, that only independent commercial importers (ICIs)² who are certificate holders may import nonconforming vehicles. This program also places other restrictions on imported nonconforming vehicles. In particular, with some exceptions during the phase-in period, it permits

nonconforming vehicles less than six original production (OP) years³ old to be conditionally admitted without bond only if they are subsequently modified and tested, if applicable, so as to be covered by a certificate of conformity. It also allows, beginning in 1988, nonconforming vehicles six OP years old and older to be imported, also without bond, under a more stringent "modification and test" procedure than that existing under the present program. During the phase-in period, some vehicles less than six OP years old may be imported under the new modification/test program. However, the number of such vehicles which may be "modified/tested" decreases each year of the phase-in period until 1993 when all vehicles less than six OP years old (with few exceptions) must be imported under the new certification-based program. Finally, the new program establishes an exemption from emission requirements for vehicles greater than twenty OP years old.

Certain aspects of the previous imports program—including bonded importations by persons other than certificate holders, the current "modification and test" procedure and the "five model year old personal use" exception (see Part V)—are abolished; while other parts of the current program involving exemptions and exclusions and the catalyst replacement program are retained with changes. A description of today's action is discussed in more detail in the SAC and in Part IV, below.

Today's action is taken after consideration of a wide variety of regulatory options which were either proposed in the NPRM, the Workshops Notice or the SNPRM, or in comments received in response to these three notices. In summary, these options were—

1. Maintain the current program (with or without some modifications).
2. Prohibit the importation of nonconforming vehicles.
3. Require nonconforming vehicles to be covered by a certificate of conformity prior to entry into the United States.
4. Permit conditional entry of nonconforming vehicles but require them to be covered by a certificate of conformity prior to final entry.
5. Require all vehicles to be covered by a certificate of conformity prior to final entry except for those models whose aggregate volume does not exceed a certain threshold (these would be modified/tested) or
6. Require newer vehicles to be covered by a certificate of conformity

prior to final entry and older vehicles to be modified/tested.

Other options considered were essentially the same as above but contained differing personal use exemptions. These options are discussed in more detail in the SAC and in Parts III, IV, and VI below.

III. Rationale for EPA's Decision Not to Continue the Present Regulatory Program

In EPA's view, there are at least six significant problems associated with EPA's current regulatory program for imported nonconforming vehicles which cannot be solved by regulatory amendments while at the same time maintaining the current imports program structure.

(1) Credibility and Effectiveness—Improper Modifications

The first problem is that the "modification and test" part of the program lacks credibility and effectiveness. The record provides very strong evidence that large numbers of the vehicles imported under that procedure either were not, or are not, being modified at all, or have been modified improperly. The problem has two aspects: falsification of data and durability. The first, the falsification of data aspect, concerns the generation and reporting of false information to EPA. The second, the durability aspect, concerns modifications which, although they enable a vehicle to initially conform to Federal emission standards, are not durable over the useful life of the vehicle as required by the Act. Part of this durability problem concerns modifications which are subsequently removed (or otherwise tampered with) due to the fact that they are either perceived as making the vehicle less driveable or that they, in fact, make it less driveable. The other part of the durability problem is faulty system designs or defective components which cause vehicles to deteriorate rapidly in use.

(a) Falsification of Data

The record confirms EPA's assessment that this aspect is significant, although its actual extent remains controversial and uncertain. The bulk of the data pertaining to falsification of data involves misreporting to EPA by various laboratories (although various data, addressed in Part VI, also exists in connection with the "five model year old" policy). To date, EPA has conducted administrative and/or criminal investigations of six

¹ Revision of these regulations is being done in conjunction with the U.S. Customs Service which will publish its own revised regulations addressing importations of nonconforming vehicles.

² The term "independent commercial importer" as used here means an importer who does not have a contractual agreement with an original equipment manufacturer (OEM) to act as its authorized representative for the distribution of motor vehicles and motor vehicle engines into the U.S. market.

³ For definition of "OP" year, see note 11, *infra*.

laboratories across the country which have submitted false data. All of these laboratories have been delisted and, thus far, in four of these cases corporate officers and/or laboratory personnel have pleaded guilty to various counts of falsification of data and/or mail fraud.

EPA believes that such falsification of data occurs, in part, because of the difficulty in modifying a vehicle to comply with standards, the expense of the FTP and price competition among the laboratories. This conclusion is supported by the record. For example, one private laboratory commented that barely 10 percent of the modified vehicles pass the FTP the first time and that this figure was as low as 2-3 percent just one year ago. It also stated that many of the vehicles that fail at its facility never return to it for retest yet are subsequently submitted to EPA for admission. The EPA staff have received similar statements from ICI modifiers and laboratories as well as from the California Air Resources Board (CARB).

(b) Non-durable Modifications

The record contains very strong evidence supporting EPA's assessment that many mod/test vehicles are not being properly modified and that most modifications lack durability for five years or 50,000 miles (as required by the Act). Moreover, in spite of requests by EPA, the record is devoid of any mod/test data (except for retests of an EPA/CARB study diesel vehicle and two diesel vehicles reported by a private laboratory, Olson Engineering, Inc.) indicating that mod/test vehicles are durable. While some ICIs did challenge the EPA/CARB study (see below), many ICIs admitted that many vehicles are not being properly modified and that the modifications are not durable.

Various vehicle survey data also indicate that purported modifications are not always being performed. Surveys conducted by five OEMs (Mercedes Benz of North America, Inc. (MBNA); BMW of North America, Inc.; Jaguar Cars, Inc.; National Automobile Dealers Association; and, the Texas Automobile Dealers Association) of nonconforming vehicles appearing at dealerships throughout the United States after admission under the modification/test procedure revealed consistently low rates of emission control parts present on the vehicles. For example, catalyst installation rates ranged from only 55 percent to 75 percent.

The MBNA survey also provided some evidence that many of the vehicles may not be durable. For example, some vehicles were modified with oxidation catalyst systems. In EPA's judgement,

many European vehicles⁴ modified with oxidation catalysts are not likely to meet current model year standards for their useful lives. In addition, various states, including California, Oregon and Alaska, submitted data to show specific problems with improperly modified vehicles in their states.

The general lack of durability of the modifications is supported by the test results of the joint EPA/CARB testing program, conducted in September and October, 1984. The purpose of the program was to provide information for use in reevaluation of the EPA imports program. The EPA/CARB joint program considered a sample of twenty-seven vehicles that had been imported under the modification/test procedure and alleged to have met emission standards. The vehicles were re-tested in accordance with the FTP by CARB. Twenty-six vehicles failed the emissions tests for at least one pollutant. (The passing vehicle was a diesel vehicle.) In many cases, failures were by substantial margins, even though many of the vehicles had relatively little mileage accumulation. The sample of twenty-seven vehicles tested in the program was originally selected, utilizing statistical sampling techniques according to specified criteria, from a larger number of vehicles which five test laboratories located in Southern California had reported to EPA to be in conformity at the time they were tested by the laboratories. (At the time of retesting, EPA had not approved release of the obligation on the importation bonds for any of the vehicles.) A description of the program and the results obtained were placed in the docket, as well as additional information relating to specifics of procurement and testing sequences of actual vehicles.

Various commenters, including the Automobile Importers Compliance Association (AICA) and International Motors, criticized the procurement methodology and emission test procedures utilized in the EPA/CARB program. Specifically, they said it was unfair that the ICIs for the vehicles in question were not given an opportunity to inspect the vehicles prior to the CARB test nor to be present for the testing. Among other concerns, they noted that the vehicles were tested in an "as is" condition and not set to specifications as are other vehicles tested in EPA's in-use program. In addition, various modifiers and laboratories who had

either modified or tested vehicles involved in the study, and who responded to EPA's request for an explanation of the test results, also criticized the methodology and actual conduct of the testing. The methodology criticism was the third most frequent explanation given for the results followed by the presence of tampering and component failure. Except for component failure, EPA disagrees with those criticisms. A detailed analysis of those comments and EPA's positions on various issues raised is contained in a document entitled "Supplementary Information on Joint EPA/CARB program, September-October, 1984: Analysis of Responses by Affected Modifiers and Test Laboratories to EPA Request for Explanation of Program Results" that has been placed in the docket for the rulemaking.

In summary, EPA still is confident that the vehicle procurement and testing procedures were valid and appropriate and that the test results strongly indicate the non-durability of most modifications. Other possible explanations offered by the ICIs for vehicles' failures such as tampering (i.e., removing or disabling emission controls) would simply confirm EPA's conclusion that many mod/test vehicles are not durable. With respect to the criticism that vehicles were not "set to specifications" prior to test, EPA believes testing vehicles in an "as-received" condition is representative of the emissions of the vehicles since none of the vehicles were supplied with such specifications.

Finally, it should be noted that the only data in the record relating to vehicles modified in accordance with certificates held by ICIs include emission re-test results on three vehicles (as tested by one OEM and two ICIs): "certification" emission tests on vehicles of the types not generally imported under the program; and, MBNA survey data on five vehicles covered by ICI certificates. Two of the three vehicles that were re-tested passed or only marginally failed, but in each case, the deterioration factor⁵

⁴ The current small volume certification regulations (40 CFR 86.084-14) provide that a small volume manufacturer must demonstrate compliance on an actual vehicle whose emissions have been stabilized (accumulated mileage may range from zero up to 4,000 miles). A deterioration factor specified by EPA is then applied to the emissions level of the vehicle to project emissions at 50,000 miles. The projected emission rate at 50,000 miles is used to establish compliance. (This procedure is in contrast to large volume certification which requires a 50,000 mile durability demonstration on a prototype vehicle.)

⁵ Expensive European vehicles comprise more than 99 percent of the vehicles imported under the current regulations (excluding the catalyst replacement provision).

exceeded that assigned in certification. The third vehicle, re-tested by MBNA, showed test results which are the basis of significantly higher deterioration factors than ones assigned in certification. The "certification" tests (on the vehicles mentioned above) showed durability at high mileages. However, some parts were found missing on three of the five vehicles surveyed by MBNA.

(2) Administration of the Program—Excessive Paperwork

The second problem with nearly all aspects of the current EPA program is the extensive resource requirements associated with its administration. Large amounts of paperwork and technical data are required to be submitted for each individual vehicle imported. Such paperwork and technical data must be received, processed, evaluated and then responded to, including recommendations to U.S. Customs concerning releases of the bond (or, in some cases, payment of a mitigated penalty for vehicles that are not brought into conformity). Also, with the vastly increased volumes of nonconforming vehicles imported annually (from 1500 in 1980 to about 68,000 in 1985), delays are created in the system which then serve to stimulate written and oral inquiries to EPA concerning the review status of particular vehicles. EPA estimates that, in addition to the paperwork associated with compliance demonstration, in 1985, it received approximately 350-400 pieces of correspondence and 1000 telephone inquiries per week concerning nonconforming imported vehicles. Such paperwork and inquiries severely overburden EPA resources which might better be allocated to more productive enforcement activities.

(3) EPA Enforcement

Thirdly, the technical requirements and diffused responsibilities associated with the "modification and test" part of the program pose significant enforcement problems. The problems have two main aspects.

The first aspect is that, from a practical perspective, responsibility for emissions control is diffused among various persons in the chain of commerce making it difficult to have an effective enforcement program. The Act requires the importer to bring the imported nonconforming vehicles into compliance. Yet, under the existing regulations, anyone can be an importer (there are no special requirements); most importers are individuals or businesses who are not generally knowledgeable about emissions compliance and must rely on other

entities, such as a modifier that performs the modifications and/or a private emission test laboratory that performs the FTP emissions test. In making its judgments concerning the emissions compliance of a vehicle, under the existing rules, EPA relies on data submitted from test laboratories recognized by EPA as technically capable of performing an FTP. In many cases, however, the laboratories do not perform the actual modifications; they merely conduct the FTP, report the test results, identify the parts only in general terms and attach photographs of such modifications. Often the laboratory claims it is responsible only for the test results and is not responsible for assessing the durability of the modifications. Moreover, there are no special requirements or qualifications for being a modifier. The result is a situation in which there are many opportunities for abuse with each person in the chain disavowing knowledge of, and responsibility for, abuses such as falsification of data, tampering and improper or nondurable modifications. Moreover, the legally responsible party, the importer, is often the person who had the least to do with actually assuring emissions compliance.

The second aspect of EPA's enforcement problem is the presence of large numbers of importers, the majority of which are individuals who import one or two vehicles (as opposed to individual commercial importers), who have limited knowledge and/or information concerning the quality of modifications or emission testing. While normally enforcement against a few violators provides sufficient deterrence to other similarly regulated parties, such an effect is difficult where there are thousands of relatively unknowledgeable persons often operating in virtual isolation from each other. Thus, oversight of the regulation's requirements is very difficult.

(4) Compliance With Other Requirements

The fourth problem with EPA's current program is that it does not effectively ensure that importers comply with various types of manufacturer requirements with which OEMs must comply. By definition under section 216 of the Act, ICIs are considered to be manufacturers. OEMs, viewing this as an equity issue, have argued that the current regulations are unfair because OEMs must bear additional costs in conducting extensive certification programs to demonstrate that their vehicles will meet Federal emission standards for five years or 50,000 miles, and must assure their vehicles comply

with such requirements for certified vehicles as emissions warranty and recall provisions under section 207 of the Clean Air Act, submission of Corporate Average Fuel Economy (CAFE) data and payment of "gas guzzler" taxes under the Energy Tax Act of 1978, 26 U.S.C. 4064. OEMs also cited special problems (such as potential product liability and other legal claims and customer relations problems) caused by imported nonconforming vehicles being presented to the OEMs for servicing, due to the fact that either proper service cannot be performed on such vehicles or cannot, because of delays in obtaining parts, be performed in a timely manner.

EPA's assessment of the comments indicates that the current program fails to require adequate demonstrations of compliance with emission requirements and fails to ensure compliance with non-emission requirements (such as gas guzzler tax) by ICIs comparable to that required of OEMs. In the main, this is because of the existing regulatory framework of the program, e.g., many importers are individuals who import for personal use, not manufacturers, and, hence, the assembly line inspection, warranty and recall requirements of the Act do not apply to them.

(5) Complaints From States and Others—Air Quality

The fifth problem is that the program has generated complaints from states and others concerning air quality impacts and interference with air pollution control reduction strategies. In EPA's judgement, there are indications, particularly as reflected in the comments of California, Alaska and Oregon, that EPA's current program does interfere with the implementation of Inspection and Maintenance (I/M) programs in some states, especially those most affected by nonconforming vehicles. This impact is dependent on the nonconforming vehicle importation rates (rates in 1986 are significantly lower than in 1985). While these states and various OEMs argued that such impacts do exist, some other commenters, including the U.S. Small Business Administration, argued that such impacts are negligible. However, EPA agrees with the argument advanced by California concerning the incremental nature of air pollution.*

* California argues that while any single polluting source—such as an individual vehicle not meeting applicable standards—may not in itself cause significant environmental harm, it contributes an incremental part to the cumulative air quality problem in any particular area.

California has provided an analysis of the impact in Southern California which points to a particular problem in that area.

(6) Exceptions and Enforcement Policies

Finally, the current program features a "five model year old" personal use enforcement policy and other exceptions which themselves pose problems. These problems are discussed below in Part VI.

In summary, the record and EPA's experience with the present program demonstrates the need for more control over the modifications that are made to these nonconforming vehicles to assure proper modification of the vehicles, as well as their durability. Moreover, all requirements (warranty, labeling, recall, etc.) of the Act imposed on other manufacturers should be imposed on commercial importers of nonconforming vehicles to ensure compliance with emission standards over the useful life of the vehicles and to ensure fair treatment for all manufacturers.

The problems associated with the current imports program can only be solved by substantial changes to the present structure. EPA believes that proper oversight can only be accomplished by adopting a program that requires more and more, and ultimately most, vehicles be covered by certificates of conformity. In this way, EPA will review and test the modification designs to be placed on many more nonconforming vehicles before they are imported and modified, thereby resulting in better and more durable designs. EPA also believes that as a result of successful completion of the certification process, this technology will be transferred, in whole or in part, to "modification and test" vehicles that will be permitted to be imported, especially if importation of "mod/test" vehicles is limited to importers that have already obtained at least one certificate.

Limiting importation only to certificate holders will also solve several of the problems associated with the current program. First, the burden of administering the paperwork associated with the imports program will decrease. This, as discussed in Part V, is primarily because today's action replaces the bonding requirement for each vehicle with a fifteen working day hold mechanism and more stringent sanctions. Therefore, additional resources will be available to conduct regular inspections of vehicle modifications to ensure that they are properly performed. Second, selective enforcement will be more effective when the total number of importers is smaller than now. Third, better modification

designs are anticipated as a likely result of the certification requirements.

Finally, a provision permitting only commercial importers to import vehicles enables EPA to impose warranty, labeling, recall and other emission compliance and manufacturer responsibilities on importers. The imposition of these requirements further ensures compliance with Federal emission standards for the useful lives of these imported vehicles.

As indicated above, EPA believes that the final program must make substantial changes to the current imports program in order to correct the problems associated with it. Two options were proposed which would modify the present program but keep its basic structure. One was proposed by a representative of ICI, the Automobile Importers Compliance Association (AICA); the other was by an ICI, Olson Engineering, Inc. EPA believes adoption of either of these two options would be inappropriate for the reasons outlined in the SAC and below.

1. The AICA "Self Policing" Option—In its comments, AICA said that its proposal would address problems of the current program such as durability, excessive EPA paperwork and enforcement. The AICA proposal would change the administrative arrangement of the current program in three ways. First, it would provide for additional requirements for laboratories conducting emissions tests used for compliance determinations. Second, it would provide a "ten day hold" of vehicles at the emission laboratories to allow EPA an opportunity to inspect them and, if needed, require retests. After the "ten day hold" period, automatic releases of the Customs bonds would take place should EPA fail to reject the laboratory's test results. Finally, it proposed a monitoring program through which AICA would supplement EPA laboratory inspections and vehicle retests through its own laboratory inspections and oversight of vehicle testing. This "self policing" program would feature AICA stickers on each vehicle tested and found to be in compliance. AICA re-tests of vehicles resulting in test results different from those submitted to EPA and which showed violation of standards would lead to revocation of the stickers. AICA would report to EPA all test data and sticker revocations. AICA would require a performance bond to be obtained by participating members which would be forfeited to AICA upon revocation. AICA said active EPA enforcement would be a precondition for a successful program. The proposal would also add requirements for driveability tests for

vehicles in the monitoring program and for emission warranties for all vehicles. It also would revise the small volume certification regulations.

2. Olson Engineering Proposal—This ICI proposed addressing the problems with the current program through creation of a new entity, responsible to EPA through a license process, that would perform the current EPA activities (and others) with ICIs paying for the service. EPA would establish laboratory approval and testing oversight criteria and perform a review and audit of the licensee's performance. The licensee(s) would periodically review laboratory capability, review test documentation, and provide responses to requests for information. EPA would sign bond releases and remain responsible for other elements of the program that cannot be delegated.

While these proposals contain thoughtful innovations, they do not address effectively the problems of the current program for several reasons. First, they contain no provision for assuring the durability of vehicles. Second, neither proposal adequately addresses the various problems of administration and enforcement outlined above. The two proposals would permit importations by any person, thereby continuing the practice of diffused responsibilities among the various importers, modifiers and emission test laboratories.

The proposals are flawed in other ways as indicated in the SAC. For example, EPA is concerned that the "self policing" feature of AICA's option would be difficult to implement. In fact, an AICA self-policing program similar to that proposed by AICA (called ACEP) presently exists. EPA is aware that there is little participation by ICIs in the program. However, as discussed below, EPA has incorporated in the rule, as proposed in the SNPRM, a "fifteen day hold" concept for vehicles, similar to the provision suggested by AICA.

IV. Rationale for EPA's Decision Not To Prohibit the Importation of Nonconforming Vehicles (SNPRM Option 1)

In addition to having considered, and rejected, proposals to maintain the current program, EPA considered and rejected the idea of completely prohibiting importation of nonconforming vehicles. Option 1 in the Supplemental Notice of Proposed Rulemaking (SNPRM) suggested elimination of the importation of all nonconforming vehicles, except (1) vehicles covered originally by a certificate of conformity, and (2) some

special exemptions (e.g., display exemptions), by abolishing the current regulatory framework and prohibiting ICIs from obtaining certificates of conformity. Elimination of the importation of nonconforming vehicles altogether is, in EPA's view, unnecessary at this time. After careful consideration of all arguments and data received in comments, EPA believes that total elimination of imported nonconforming vehicles is not justified given the sparse data in the record concerning certified vehicles.

Furthermore, EPA does not agree with the legal arguments propounded by the commenters supporting prohibition.

As explained in the preamble to the SNPRM, SNPRM Option 1 originally stemmed from comments EPA had received from various OEMs and the State of California in response to the November 4, 1983 Notice of Public Workshops. Comments on the SNPRM indicate that the option is now supported mainly by OEMs. It is explicitly opposed by two OEMs, all ICIs, two Federal agencies and various individuals.

Most of the comments dealt with the following four major issues.

1. Denial of Certification to ICIs Based on the Record

The first issue was whether ICIs as a class should be denied the opportunity to certify because they are unreliable and/or lack knowledge and control over vehicles they modify. Without such control, OEMs argued, it is unlikely that vehicles will be properly modified in accordance with the provisions of a certificate. Various OEMs argued that the data in the record concerning improper modifications (see Part III, *supra*.) provide clear evidence of such unreliability and lack of knowledge. They pointed in particular to the various OEM dealer surveys, the results of the joint EPA/CARB program and emission tests of two vehicles covered by certificates of conformity held by ICIs. Some cited the data in the record concerning falsification of data as the basis for arguing that even when ICIs have the requisite knowledge and skill, they will not use it to perform the necessary modifications because they will take advantage of EPA's limited enforcement capability. Thus, they argued, if vehicles are improperly modified and tested under the current EPA program, it is unlikely they will be properly modified under a new EPA program that requires imported vehicles to be modified so as to be covered by a certificate of conformity.

Various ICIs did not dispute the evidence concerning improper

modifications but argued that it pertained almost exclusively to the current program which is admittedly flawed and, therefore, is irrelevant to a consideration of a certification program for ICIs.

EPA notes that the data base in the record relates almost entirely to the reliability and knowledge of ICIs is the context of the current "modification/test" program. The data relating to the ability of ICIs to properly produce vehicles under EPA's certification program is too sparse to justify banning all ICIs as a class from certification. EPA believes that reasonable alternatives which are designed to address the deficiencies of the present program should be explored before a complete ban could be considered and that, as discussed above, today's action provides such a reasonable alternative.

Some OEMs also provided information on "running changes" ⁷ as further evidence of the need to ban the importation of nonconforming vehicles. OEMs argued that ICIs should be banned from certification because of their lack of knowledge of running changes affecting emissions performance. EPA does not believe that lack of knowledge of running changes by ICIs is adequate to justify eliminating the importation of nonconforming vehicles, especially given that there are reasonable alternatives available to address the running change issue. (The issue of how to address running changes in a new program is discussed in Part V, below.)

2. Denial of Certification on Legal Grounds

The second major issue was whether under sections 216(1) or 206 of the Clean Air Act, EPA should prohibit ICIs as a class from obtaining certificates. Various OEMs argued that EPA lacks any legal basis for allowing ICIs to certify. Section 216(1) defines a "manufacturer as a person engaged in the manufacturing or assembling of new motor vehicles . . . or engines, or importing such vehicles or engines for resale, or who acts for or is under the control of any such person [except dealers]. . . ." Despite the explicit inclusion of commercial importers in the definition, some OEMs argued that Congress did not intend that the definition of "manufacturer" in section 216(1) apply to ICIs, but only to entities in the original manufacturer's standard

chain of production (other than dealers) that are responsible for the Act's requirements. As such, they argued, the list of entities in the definition of "manufacturer" in section 216(1) includes OEMs' authorized importers but not independent importers.

Moreover, two OEMs (MBNA and Associated Ferrari Dealers of America (AFDA)) argued that although the 1965 legislative history of the Motor Vehicle Pollution Control Act, where the present form of section 216(1) first appeared, does not specifically discuss this subsection, there are other indicators in the 1965 legislative history supporting this view. MBNA claimed that the 1965 legislative history refers to the role played by the original manufacturer's normal chain of production in assuring emission compliance, specifically, "[t]he record [Congressional Record of September 24, 1965] has several references to the cooperation of, and duties imposed upon, the automobile industry." ⁸ Therefore, MBNA argued that the problem of "independent, free-rider entrepreneurs such as grey market importers" was simply not thought of at the time of the Act's adoption and, hence, that ICIs were not meant to be included within the definition of manufacturer in section 216(1).⁹

AFDA also cited similar portions of the legislative history in concluding that Congress intended to impose obligations on the auto industry as it then existed and that Congress neither foresaw the rise of the grey market nor intended its definition of manufacturer to encompass gray marketers.¹⁰

Furthermore, according to MBNA, the Act's amendments to section 203 in 1970, to give EPA discretion to allow some nonconforming imports, were designed to address only two problems: Original manufacturers who imported old nonconforming cars and individuals who imported new or old nonconforming vehicles for purposes other than sale or resale. The legislative history, it claimed, does not recognize other types of importations. Thus, the 1970 legislative history purportedly also supports the conclusion that Congress never contemplated the importation of nonconforming vehicles by commercial interests other than original manufacturers.

Various OEMs argued that this legal analysis and the data in the record indicate that EPA lacks any basis for

⁷ Running changes are those changes in configuration, equipment, calibration and so forth which may be made by a manufacturer in the course of production of a model line or engine family and which may have an effect on vehicle emissions performance.

⁸ See MBNA submission to EPA Docket EN-79-9, January 23, 1984, pp. 7-15.

⁹ Id. at p. 9.

¹⁰ See AFDA submission to EPA Docket EN-79-9, pp. 14-19.

allowing ICIs to certify. One OEM argued that even if EPA did believe ICIs were manufacturers, there is a legal basis for ignoring that interpretation when an ineffective program has been demonstrated.

One ICI disagreed and argued explicitly that section 216 of the Act makes it clear that ICIs are manufacturers and that it has been EPA's practice to recognize this. The SNPRM, according to this ICI, does not contain any justification for EPA to change its view.

EPA still believes that ICIs are manufacturers under section 216(1) of the Act, and, hence, are entitled to apply for certification. Section 216(1) expressly provides that the term "manufacturer" includes "any person engaged in the manufacturing . . . of new motor vehicles or new motor vehicle engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles or . . . engines. . . ." (Emphasis added.)

Thus, the statutory language on its face specifically provides that any importer for resale is a manufacturer without regard to whether the importer is independent or an authorized representative of the OEM. The statutory language implicitly provides additional support for this interpretation. The definition includes not only persons manufacturing, assembling, or importing new vehicles, but also persons "who act for or are under the control of any such person in connection with the distribution . . ." of such vehicles. This last category would cover authorized importers who act for or are under the control of the OEMs. Thus, if the specific reference to importers for resale in section 216(1) were limited to authorized importers, as the OEMs suggest, the latter phrase would be superfluous and redundant. EPA does not believe that Congress would have intended such a meaningless redundancy. Accordingly, the reference to importers in the definition must include importers who are *not* authorized representatives of OEMs.

EPA believes that OEM reliance on the 1965 and 1970 legislative history of the Act is weak at best, especially in light of the clear statutory language of section 216(1) of the Act. The sections of 1965 legislative history cited by MBNA are largely focused on the health effects of air pollution and the need for Federal, as opposed to state, regulation to protect auto manufacturers from divergent regulations. There is no emphasis in the cited portions of the legislative history

on the structure of the auto industry or on the relevance of the industry's structure to the then-pending legislation. Accordingly, EPA does not find MBNA's reading of these casual references to auto manufacturers as intentionally limiting the reach of the legislation to the typical production chain to be persuasive.

The legislative history cited by AFDA addresses the auto industry's technical knowledge and skill in manufacturing autos with emission control equipment. EPA believes that Congress was addressing a general situation when it spoke of the auto industry's knowledge and skill and was not focusing on the narrow issue of who would equip imported autos with emissions equipment. In summary, EPA believes that the 1965 references to the "auto industry" cited by the OEMs were not intended to carry any special significance regarding the status of importers under section 216 and sheds no light on the meaning of the definition.

EPA also believes that the 1970 legislative history of section 203 cited by MBNA merely acknowledges Congressional concern about the legal importation of slightly-used foreign-built nonconforming vehicles by manufacturers and individuals. At most, this indicates that Congress did not expressly consider the role of independent importers under section 203. It does not, however, lend support to the argument that Congress implicitly intended ICIs to be prohibited from importing nonconforming vehicles, especially when the language of section 216(1) so clearly encompasses them.

3. Denial of Certification to ICIs Since Certification Is Inadequate to Assure Compliance With Standards

The third major issue was whether SNPRM Option 1 should be adopted because it is the only option which provides an adequate regulatory program to meet the requirements of the Act by ensuring compliance of vehicles over their useful lives. One OEM stressed that any option featuring a certification process for ICIs is not appropriate since it assumes an identity among imported vehicles of the same model such that each vehicle modified to meet the specifications of the certificate will have similarly allowable emissions. The OEM claimed that such similarity cannot exist since there are numerous differences (not always known or of concern to ICIs) among imported vehicles of the same model which may lead to different emission results even if they are similarly modified. Therefore, it argued,

none of the options presented were adequate.

However, EPA believes that an imports program relying more and more heavily on the certification process, with the contemplated increased design scrutiny and increased enforcement discussed in Part V, and other improvements in the modification/testing process, will provide an adequate regulatory program and should prevent the problems raised by the OEMs. In addition, the concern over the identity of models is related to the running change issue and has been adequately addressed in the new program (see discussion in Part V, below).

4. Impacts of Eliminating Nonconforming Vehicles

The fourth major issue concerned the impacts of SNPRM Option 1. Various OEMs argued that SNPRM Option 1 should be adopted since it is the only option resulting in an equitable situation for them. This is because ICIs would be permitted under the certification options proposed by EPA (SNPRM Options 2 and 3) to meet more relaxed (and less expensive) requirements. EPA, they argued, should impose the same burden on all who import vehicles.

One OEM disagreed saying SNPRM Option 1 is unfair to ICIs since it would eliminate them entirely. One ICI and the U.S. Small Business Administration also expressed concern that the ICI businesses would be eliminated unjustifiably.

The U.S. Department of Justice (U.S. DOJ) and one ICI said that SNPRM Option 1 would result in a high cost to consumers since OEMs would no longer have to compete with importers of nonconforming vehicles. U.S. DOJ estimated that it would result in a combined loss of \$249 million to United States consumers. (The SAC should be consulted for further information on DOJ's analysis of the impact of this option on consumers, together with that of other options presented in the SNPRM and one OEM's detailed rebuttal.)

EPA believes it is not necessary to address the ICIs and U.S. DOJ's comments in opposition to Option 1 since, for reasons discussed earlier in this section, EPA has chosen not to adopt this option (concerns about the DOJ analysis are contained in the SAC). With respect to the OEM's equity argument, EPA believes that since all ICI models that have to be certified will go through certification procedures applicable to both small volume OEMs and ICIs, equity is assured for certified

vehicles. For the vehicles that use the new stringent "modification and test" procedure, the ICIs are subject to the requirements (discussed in Part V, below) regarding 100 percent testing, the application of deterioration factors (assigned by EPA as in small volume certification), warranties, recall, labeling and maintenance instructions. Thus, the burden on an ICI using this option should be comparable to that of any person who imports under a certificate.

V. Today's Action: EPA's New Regulatory Program for Imported Nonconforming Vehicles

Today's action provides a new regulatory program, part of which will be phased-in between 1988 and 1993, that permits entry to imported nonconforming vehicles while addressing effectively the problems posed by the old program. The new program is an outgrowth of previously proposed options and comments which, with some exceptions during the phase-in period, requires certification for imported vehicles less than six OP years old¹¹ at the time of importation, but allows importation of vehicles six OP years old or older under an enhanced modification/test program. Requirements imposed on certificate holders for both certified and modification/test vehicles (durability demonstration, recall, warranty, etc.) proposed in SNPRM Option 3 have been incorporated for the most part in this final rule. As discussed in Part 5.C below, during the phase-in period some vehicles less than six OP years old may be imported under the new modification/test program under certain circumstances. However, the number of such vehicles which may be "modified/tested" decreases each year of the phase-in period until 1993 when all vehicles less than six OP years old (with a few exceptions) must be imported under the new certification-based program. Additionally, the new program provides for an exemption from emission requirements for vehicles

greater than twenty OP years old. The new program has six major parts.

A. New Imports Program

1. Importations Only by Certificate Holders

The first part of the new program is a provision that permits only ICIs that possess a certificate of conformity from EPA to import nonconforming vehicles¹² (except in cases of exemptions and catalyst retrofit vehicles, see Part V.A.6, below).¹³ Certificate holders would bear responsibility not only for performing, within 120 days of entry, all necessary modifications and emissions testing, but also for assuring compliance of the vehicles they import with EPA emission requirements over the useful lives of the vehicles. In effect, this will impose on ICIs the same emission requirements currently imposed on OEMs by the Act.

Today's action does not preclude an individual from importing a vehicle into the U.S. Instead, it requires individuals to arrange for such importations through a certificate holder who will take responsibility for the emissions compliance of the vehicles. These vehicles would be part of the certificate holder's "production line" and the certificate holders would be responsible for complying with all requirements for vehicles which are not actually owned by the certificate holder. A certificate holder must explicitly agree to these requirements as a condition of approval for final admission of the vehicle into the United States.

The provision that only certificate holders may import nonconforming vehicles is a major step in addressing the problems of the old program. First, it focuses responsibilities for importation and for emission control on one entity (the certificate holder) and, thus, will largely eliminate the problem of diffuse responsibilities among various persons under the old program. Second, it assures that there is a responsible entity that will provide emission warranties,

maintenance instructions and recall liability and that will properly affix emissions labels and comply with fuel economy requirements. Finally, since the number of regulated persons will significantly decrease under the new program, more effective EPA enforcement is anticipated. All of the above, together with the stringent sanctions applicable to certificate holders in this final rule, are expected to result in more durable modifications, substantial prevention of improper modifications and, hence, better air quality than under the current program.

In comments on the SNPRM, there was objection by several individuals and a few ICIs to this provision. One commenter proposed allowing individuals to import vehicles over two years old (see discussion in Part VI of this and other proposals relating to variants of the option selected for today's action). On the other hand, there was support for this provision among most ICIs, state government agencies and at least two OEMs. For the reasons stated above, EPA believes that the prohibition against importations by individuals is appropriate.

2. New Administrative Requirements

The second part of the program involves certain new administrative requirements that provide for streamlined reporting requirements and a "fifteen day hold" period which, together with the availability of new sanctions, replaces bonding.

For vehicles covered by certificates of conformity and for vehicles entering under the new modification and test provision, EPA has eliminated the requirement for an EPA obligation on the Customs bond pending final admission of a vehicle, and has substituted a "fifteen working day hold" mechanism that is expected to reduce the administrative burden on EPA and Customs. Under this arrangement, each vehicle is required to be stored for a period of fifteen (15) working days following notification to EPA of modification and/or testing to provide the opportunity for EPA confirmatory testing and inspection of vehicles and records. SNPRM Option 3 had proposed retaining the bonding requirement for vehicles entering under the modification and test provision. EPA has eliminated this requirement in this final rule since EPA believes that the "fifteen working day hold" concept, together with the sanctions provided in § 85.1513, are an effective substitute for bonding for these vehicles just as with certified vehicles. The bonding mechanism has been retained for most vehicles entering

¹¹ For purposes of determining OP year, OP year is the calendar year of original production. The number of original production years a vehicle is old is determined by subtracting the original production year of the vehicle from the calendar year of importation. For example, under the new program, for nonconforming vehicles imported in calendar year 1994: Vehicles originally produced January 1, 1989 and later must be modified in accordance with an ICI's certificate of conformity; vehicles originally produced between January 1, 1974 and December 31, 1988 may be modified in accordance with a certificate or modified/tested; and vehicles which are not otherwise excluded which were originally produced before January 1, 1974 would be entitled to an exemption from demonstrating compliance with emission requirements.

¹² Today's action provides that a nonconforming vehicle includes any vehicle imported by an ICI possessing a valid certificate of conformity but which has not yet been finally admitted under these regulations. Until such final admission, vehicles imported under § 85.1505 are not considered to be covered by a certificate of conformity.

¹³ While the Act permits any person to import a vehicle covered by a certificate of conformity, these regulations permit only certificate holders (with a few exceptions) to import nonconforming vehicles. It should be noted that an importer for purposes of these regulations does not necessarily comport with "importer of record" for purposes of the Tariff Act of 1930, as amended. See 19 U.S.C. 1484. Under EPA's amended regulations, the importer must be a certificate holder and need not be the owner, purchaser or an authorized Customhouse broker, as provided for in the Tariff Act.

under some special exemptions and catalyst and O₂ sensor equipped vehicles which are not participating in programs approved by the Administrator.

In comments on the SNPRM, there was virtually no objection to the concept of the hold period. While three ICIs commented that the hold period should be shorter (e.g., ten days or three days), as indicated in the SAC, EPA believes that fifteen days is appropriate, given the number of vehicles expected to be imported and the need to provide EPA flexibility and a realistic opportunity to conduct inspections.

Paperwork requirements for reporting compliance of each vehicle to EPA (in the cases of both certified and mod/test vehicles) are streamlined under the new program. When a certificate holder voluntarily imports a nonconforming vehicle, it is required to report this "conditional entry," as before, on a brief form to EPA. When all modifications (and testing, where applicable) are completed, it then submits only a brief application containing information demonstrating that the vehicle has been properly modified and/or tested. The application forms shall be completed in accordance with EPA instructions and are likely to be designed so that they can be read automatically by an optical character reader into EPA's computer. Alternatively, the final rule provides that a certificate holder may choose to submit the data electronically to the EPA computer using a prescribed EPA format. These data then will serve as a tool for use by EPA in inspection/enforcement strategies. Through this new system, the extensive test documentation reporting requirement under the present program is eliminated and, thus, administration and enforcement are facilitated.

3. Requirements for Certified Vehicles Covered by Certificates

The third part of the new imports framework are the requirements imposed on certificate holders for vehicles they import which are intended to be modified and/or tested in accordance with a certificate of conformity. Unlike the present imports program, the EPA small volume certification regulations at 40 CFR 86.084-14—under which most nonconforming vehicles will eventually be certified—involve some "up front" screening for durability problems on a prototype vehicle and require test values to be adjusted using deterioration factors that project emissions over a vehicle's useful life. As indicated in the SNPRM, EPA intends to perform confirmatory tests on prototype vehicles

for importers under the new program and to carefully scrutinize vehicle designs before issuing the certificate. Vehicles then imported under the certificate must be modified in accordance with the certificate. This fact alone should greatly facilitate enforcement since instead of having to retest vehicles to determine compliance, as was often necessary under the old "modification and test" method, EPA will be able to inspect many vehicles and check the parts installed against the description in the certification application to determine whether the certificate holder has met its emission responsibilities.

Today's action also imposes a requirement for certificate holders to provide assurance to EPA that vehicles modified in accordance with the provisions of an importer's certificate would not be adversely affected by unknown running changes. The new regulation provides that assurance can be given through successful completion of an FTP test on every third vehicle (with application of a deterioration factor) or presentation to EPA of a statement by the appropriate OEM that the OEM will provide all information concerning running changes to the importer and, at the same time, to EPA. This latter scheme would need prior EPA approval which would not be given unless the importer, among other things, could demonstrate that it had the capability of evaluating the effect of the running changes on emissions. As noted below, EPA has made some relatively minor changes from the language proposed in the SNPRM in this regard.

Furthermore, certificate holders are required to comply with various requirements imposed on OEMs. These include requirements for assembly line inspections, recall, maintenance instructions, warranty, emissions labeling and fuel economy requirements (including fuel economy labeling), and gas guzzler tax. There are also recordkeeping requirements which have been imposed on certificate holders. Most of these requirements are promulgated as described in the preamble to the SNPRM and thus are discussed in detail below only when significant comments were received or changes were made.

Major comments focused on the following: a. Durability/in-use testing, b. configuration control/running changes, c. service availability, d. financial responsibility and e. definition of model year. Additional comments were made on provisions relating to: f. Assembly line inspections, g. recall, h. driveability assurance and i. repair manuals. While

EPA received no comments concerning proposed regulations for laboratories, EPA, as explained below, has decided not to issue these regulations.

a. Durability assurance/in-use testing. Many commenters expressed the concern that EPA's small volume certification regulations are an inadequate means of assuring the emissions durability of nonconforming vehicles. OEMs indicated that the assigned deterioration factors used in small volume certification to predict emission performance at 50,000 miles were not appropriate for ICI small volume certification. This is because these assigned deterioration factors are based on 50,000 mile durability tests performed on vehicles with technology purportedly different from that used on nonconforming vehicles. OEMs were also concerned that a requirement for 5000 mile testing permitted by section 206(a) of the Act for small volume manufacturers would not be adequate since catalyst deterioration data showed that it was not necessarily a good predictor of vehicle emissions at 50,000 miles. Many of the OEMs proposed that ICIs should be required to do 50,000 mile durability testing to certify. ICI commenters, on the other hand, argued that the small volume procedures were adequate and appropriate for use by ICIs and that requiring 50,000 mile durability testing of small volume certifiers may not be legal.

Assuming ICIs will qualify for small volume (as opposed to large volume) certification, EPA believes today's action will provide an adequate level of durability assurance for certified vehicles for the following reasons. First, EPA plans to carefully scrutinize vehicle modifications proposed in certification applications and to take aggressive measures where poor modifications are identified which may significantly affect emissions durability. This is expected to result in more durable technology. Second, the final rule, unlike the present program, requires that importers comply with all regulatory requirements imposed on other manufacturers. Third, consolidation of the nonconforming imports industry, (i.e., mergers of ICIs, modifiers and other businesses) and the reduction in paperwork that will likely result from the final rule, will free EPA resources for better enforcement and use of the stringent sanctions available. Fourth, EPA believes that better and more durable technology will likely be developed by a consolidated industry, in contrast to that used by the highly diversified and individualized industry existing under the present program.

Some commenters, including the State of California, urged EPA to impose a new in-use testing requirement to be paid for by ICIs. This would be similar to a requirement imposed by California in its new regulations regarding newly manufactured nonconforming imports. The purpose of the requirement would be to provide an alternative means of durability assurance to compensate for the lack of a 50,000 mile certification testing requirement for small volume ICIs. There was mixed reaction to that concept among commenters. One OEM urged EPA to adopt the concept with the stipulation that a 50,000 mile durability test requirement as a prerequisite for certification also be included. Other commenters expressed doubts about the legality, fairness and practicality of the concept.

EPA believes that while an in-use testing requirement as described by California has some merit, for reasons indicated above, it is not essential to the effectiveness of the new program. For example, EPA already has authority under section 207(c) of the Act to perform in-use testing of any manufacturer's vehicles in the exercise of EPA's recall authority.

Several commenters proposed that an engine mapping¹⁴ requirement be added as a means of durability demonstration. EPA believes that engine mapping is not an adequate means of addressing the durability issue. First, there are no widely accepted procedures for engine mapping. Second, engine maps are developed using a fully warmed-up engine or catalyst and thus thermal transients such as cold start emissions (which contribute substantially to the overall emission levels of a vehicle) do not show up on such maps. Third, engine maps are usually developed using steady-state speeds and loads while real engines in real vehicles operate in a transient fashion. Thus, differing results can be expected for the two situations. Therefore, EPA believes that an engine mapping requirement is not appropriate at this time.

Some OEMs argued that the small volume certification procedures provided for by section 206(a) of the Act could not be utilized by ICIs since legislative history shows that the provision was designed only for small

manufacturers who produce vehicles for sale in the U.S. EPA disagrees. As discussed in Part IV above, there is no indication in the legislative history that Congress did not intend section 206(a) to apply to all small volume manufacturers, including eligible ICIs.

Various OEMs commented that all sales of a given make by all ICIs should be aggregated with all U.S. sales of that make by OEMs to determine if any ICI is eligible for small volume status under 40 CFR 86.082-14 (i.e., total sales under 10,000 per year). EPA historically has not required ICIs to aggregate their vehicle sales with respective OEMs for purposes of determining eligibility for small volume certification procedures. EPA believes this practice is still appropriate under the present regulation. As indicated in the preamble to the final rule establishing optional small volume procedures, the intent of the aggregation provision at 40 CFR 86.082-14(b)(2), was to ensure that large volume certification was not circumvented. In particular, the small volume certification rule, published on March 12, 1981 (46 FR 16259), noted that EPA was concerned that a large volume manufacturer would market small numbers of vehicles through many distributors or importers, making each distributor or importer eligible for small volume certification even though the manufacturer would have been ineligible. Such a cooperative arrangement between the ICIs and their OEM counterparts is not the case with ICI importations. Hence, EPA believes that aggregation of their sales was not intended by 40 CFR 86.082-14(b)(2). (However, EPA may consider changes to this requirement in a separate, future, rulemaking pertaining to the small volume certification rules.)

b. Configuration control/running changes. After consideration of all comments on this issue, EPA has decided on two methods by which ICIs could provide assurances to EPA that the emissions of vehicles modified in accordance with the provisions of an ICI's certificate of conformity would not be adversely affected by production or running changes.

First, the certificate holder may present to EPA a statement by the OEM that the OEM will provide to the certificate holder and to EPA all information concerning running changes. When running changes do occur, the certificate holder must assure that a description of the running changes and an assessment of their emissions effects are actually received by EPA. This provision differs slightly from the SNPRM in that it only requires a

statement from the OEM, as opposed to an enforceable agreement between the OEM and the certificate holder. The change was made in response to comments from two OEMs that indicated that they would provide to EPA information on running changes. In addition, prior approval of this method must be obtained from EPA in order to ensure that notification of the running changes will be received and that the certificate holder will have the technical expertise to evaluate the emissions effects of the running changes.

The second method requires that an FTP test be conducted on every third vehicle imported under a certificate until a threshold of 300 vehicles is imported (under that certificate) without having to make adjustments or other modifications due to running changes, at which time an FTP test on every fifth vehicle is required. If, at any time, any "running changes" are made to the vehicles by ICIs on their own initiative (as described below) in order to bring their vehicles into compliance, then counting for purposes of determining the 300 figure and testing of every third vehicle will begin again, starting with the first vehicle receiving such changes.

Today's action provides that certificate holders are required to report test failures to EPA. Should a vehicle fail an FTP, the certificate holder may retest the vehicle within five working days subsequent to the first test. Such retest must involve no adjustment of the vehicle (e.g., adjusting the RPM) from the first test other than adjustments of adjustable parameters that, upon inspection, were found to be out of tolerance. (When such an allowable adjustment is made, the parameter may be reset only to the nominal value, but not to any other value within the tolerance band.) Should a second failure occur, then the certificate holder must initiate a running change pursuant to existing 40 CFR 86.084-14(c)(13) that causes the vehicle to meet Federal standards (as demonstrated by passage of an FTP test¹⁵). In order to be deemed acceptable by EPA, ICI running changes involving adjustments of adjustable vehicle parameters must be changes in the nominal values (i.e., not simply changes to values other than nominal values in the tolerance bands). Such running changes must be reported to EPA but mere reporting (or final admission of vehicles with the running change) will not constitute automatic

¹⁴ Engine mapping is a technique used to make estimates of engine and vehicle performance over complicated driving cycles such as that specified in the FTP. An engine map is analogous to a topographical map of a geographical area. Emissions of the engine are analogous to height on the topographical map while engine speed and engine load are analogous to two directions. Thus, a map of a pollutant from an engine would be lines of constant emissions on an engine speed/load graph.

¹⁵ FTP testing associated with proveout of running changes must be performed at the laboratory which conducted certification testing for the ICI.

approval by EPA of the ICI's running change.

Today's action differs slightly from the SNPRM in various ways. First, it deletes the requirement for emission-related parts identification for each of the vehicles that are not FTP-tested as a means of detecting running changes. One OEM indicated that identical parts numbers are not always a reliable indicator that running changes affecting emissions have not occurred and EPA agrees.

Second, it deletes the SNPRM proposal for 100 percent testing (as an alternative to Method 1 above or Method 2 with a requirement for parts identification for the non-tested vehicles). EPA believes that testing every third (or fifth) vehicle imported provides adequate assurance that running changes do not affect emissions significantly and, hence, 100 percent testing has not been required.

The third way today's action differs from the SNPRM is the provision for a lower percentage (20 percent) of required FTP testing for vehicles imported under any certificate as the volume imported under the certificate exceeds 300 vehicles. Even though the percentage of testing is reduced after the volume of importations under a certificate reaches 300, the total number of vehicles tested by larger volume importers under a certificate is approximately equal to the number of vehicles tested by a lower volume importer. Therefore, the burden of testing is reduced while at the same time the amount of information regarding running changes remains fairly constant.

Most OEMs objected to one or more of the three methods proposed in the SNPRM, calling them "unworkable" and proposed in-use testing or engine mapping as methods of addressing the issue. At least one OEM and various ICIs supported one or more of the methods as did the State of California (who urged this be complemented by in-use testing). Various ICIs supported the notion of testing every third vehicle while others argued for requiring lesser amounts of testing.

EPA does not agree with OEMs who commented that Method 1 is unworkable. For example, EPA is already aware of at least two OEMs who have said they will make information on running changes available. Moreover, ICIs who use this method are required to submit such changes to EPA with an analysis of the change on emissions. Thus, EPA believes that this method will be workable and effective.

EPA acknowledges that the zero mile testing requirements of EPA Methods 2

and 3 do not address the long term effects of running changes. However, no reasonable alternatives exist. Even OEMs are not required to perform durability testing to demonstrate the long term effects of running changes unless they create a new engine family or emission control system. Such a requirement is generally not practical, and, therefore, engineering analysis or judgment often is used. Also, EPA believes neither in-use testing nor engine mapping are appropriate for the reasons discussed above.

c. Service network and warranty. Virtually all OEMs, as well as three state agencies commented that ICIs should be required to provide service outlets to ensure effective warranty and recall and to provide relief for OEM dealers and OEMs from complaints often received at the OEM dealers about nonconforming vehicles. A service network would also obviate the need for "post repair" reimbursements from ICIs for repairs performed by OEM dealers.

There was no clear opposition from ICIs on this issue. One ICI said such a requirement would not be "unreasonable" although it was not needed because the OEM network does an adequate job of servicing the vehicles. Others argued that an ICI dealer structure will evolve naturally anyway.

EPA believes that while a service network requirement may have merit, it should be studied further before being required. There is some evidence in the record that a service network may be a potential outgrowth of a certification-based program which causes consolidation of ICIs. Moreover, the OEM surveys show that servicing is generally available at OEM dealers. EPA, therefore, believes it would be more appropriate to evaluate this issue at a later time.

d. Financial responsibility. OEMs, together with the State of California, which has a requirement of this type in its new ICI regulations, suggested requiring ICI certificate holders to acquire bonds and/or prepaid insurance to cover ICI warranty and recall liability for the useful life of each vehicle. There was no opposition from ICIs regarding this concept even though it was discussed at length in both of the public hearings on the SNPRM.

CARB noted that its own new regulation addressing non-conforming vehicles requires modifiers to post a prepaid surety bond in the amount of \$1000 per vehicle to cover its obligation to perform recalls. The bond is refundable at the end of the useful life of the vehicle (i.e., as associated with the CARB program, 5, 7 or 10 years) or when

the recall period for an engine family has ended. Alternatively, the modifier can purchase insurance which will cover the modifier's recall obligation and thereby avoid the posting of bonds.

CARB argued that because this industry is composed of small businesses, it is quite likely that a number of firms will fail over time. Without a requirement for a bond or insurance policy to cover warranty and recall repairs, owners of vehicles obtained from firms that are no longer in business would have to bear the warranty costs. Without adequate warranty coverage, tampering is more likely to occur.

Today's action contains a provision for a prepaid insurance policy that, in effect, assures effective warranty coverage. Thus, a bond that is required to be held to assure an effective recall and warranty program is unnecessary and, therefore, should not be made a part of the final rule. Furthermore, as discussed in the preceding part, a service network may be a likely outgrowth of the new program and will help address warranty and recall concerns. Finally, sanctions are available in the new regulation and the Act for failure to properly conduct recalls. Thus, EPA does not believe an additional bonding requirement is necessary at this time.

e. Model year. Various ICIs urged EPA to change its policy regarding model year as it applies to vehicles modified by an ICI pursuant to a certificate of conformity. They argued that the current EPA model year definition unfairly limits the period in which ICIs can sell their vehicles since the certification process for a "new" model cannot even begin until January 1 and will not be completed until at least two months later. Since the certificate is only valid until December 31, the ICIs argued that the "window of importation" is thus limited, at best, to only eight to ten months a year.

EPA believes that the current policy is fairly applied to both OEMs and ICIs and that part of the problem may be due to a misunderstanding of the policy.

Section 206(a) of the Act provides that a certificate of conformity may be issued for a period of not more than one year. EPA has interpreted the phrase "one year" to mean one model year which can extend for as long as almost two calendar years. For example, a certificate may be obtained as early as January 2 of the calendar year preceding the calendar year for the named model year and expires by December 31 of the calendar year for which the model year is named (see Advisory Circular No. 6A

(Subject: Duration of Certificates of Conformity and Production Period. September 1, 1972)). EPA will apply this definition equally to OEMs and ICIs.

However, in order to determine whether a particular ICI or OEM vehicle is covered by a certificate of conformity, EPA must look to factors other than the model year¹⁶ designated by the certificate holder. Specifically, EPA must examine the description of the emission prototype vehicle in the certificate holder's application for certification. If the vehicle produced is materially the same as the description in the certification application, then it is covered by the certificate holder's certificate of conformity; if it is not, then the vehicle is not covered.

The decision as to whether an ICI vehicle is covered by the ICI's certificate depends not only on the type of modifications the ICI makes to the OEM vehicle but also on the configuration of the OEM vehicle. This is because changes in the emission systems installed by the ICI or the OEM vehicle as originally manufactured can affect vehicle emissions. In the past, ICI certification applications have contained only a technical description of the ICI's modifications and were devoid of any technical description of the vehicle as originally manufactured by the OEM. Therefore, it was necessary for EPA to determine the production period or model year of the OEM in order to assure that no significant new production changes had been made to the vehicle as originally manufactured which might affect emissions and, hence, certificate coverage.

EPA has found, however, that apparently some European manufacturers have no formal production period and model year is determined in Europe by reference to the date of first registration. Therefore, EPA decided, in accordance with 40 CFR 86.085-2, to designate the European production period (or model year) as the calendar year of original production. Accordingly, to determine whether a particular ICI vehicle is covered by the ICI's certificate of conformity, reference must be made to both the date that the ICI modified the vehicle (which must fall within the ICI's model year or production period stated on the certificate) and the date the vehicle was originally manufactured (which must fall within the same calendar year as the certification prototype was originally manufactured). For example, an ICI can

obtain a 1987 EPA certificate of conformity¹⁷ in calendar year 1986 for vehicles produced in Europe in calendar year 1986. This certificate will be valid for vehicles produced in Europe in calendar year 1986 and modified by the ICI through December 31, 1987.

Without more information about the designation of the OEM production period or model year, which has not been supplied during the rulemaking, EPA intends to use the approach outlined above. At present, it is the method best available to determine certificate coverage.

ICIs are incorrect in assuming that EPA's approach to certificate coverage limits ICI production to eight to ten months. As indicated above, a production period can be almost two years.

f. Assembly line inspections. As proposed, EPA is promulgating provisions allowing EPA to inspect and test vehicles imported under the new program which are still under the control of the importer. EPA inspections, as provided in new § 85.1506, could occur at any time during operating hours. Many will focus only on examining records and vehicles while others can be expected to require reasonable numbers of FTP tests. (Such vehicles need not necessarily be ones tested originally by the ICI to satisfy the "one in three" testing requirement.) One ICI commented that the regulation should contain a limitation on the numbers of tests that can be required. As discussed in the SAC, EPA disagrees that more specific criteria are needed.

g. In-use inspections and recall requirements. As proposed, importers under the new program will be subject to recall requirements as provided in new § 85.1508 if EPA determines that a substantial number of an imported model fail to comply with emission standards in-use. One ICI commented that the criterion of "substantial" number of failures upon which to base a recall is too vague. EPA believes that the term "substantial" is appropriate since it is also used in section 207(c) of the Act, which authorizes recalls, and in the existing recall regulations at 40 CFR Part 85, Subpart S.

h. Driveability requirement. The State of California urged EPA to include a driveability requirement to remove the incentive to tamper. However, EPA believes that a specific test is outside the scope of the previous three notices and that no such test is necessary at this time. Furthermore, EPA believes that it

can scrutinize vehicle designs for driveability problems as part of the certification process and withhold or deny certification based on driveability concerns. See *Chrysler Corp. v. EPA*, 631 F.2d 865 (D.C. Cir 1980), cert. denied 449 U.S. 1021.

i. Repair manuals. A few commenters said EPA should require certificate holders to provide repair manuals to owners. This regulation does not do so. EPA does not believe such a requirement is necessary at this time since the regulation provides for maintenance instructions and emission labeling. In addition, the record indicates that there is already availability of servicing at OEM dealers and the potential for more ICI dealer networks. EPA, however, believes it would be more appropriate to reevaluate the issue at a later time.

j. Laboratory requirements. EPA has decided not to adopt the proposed regulatory language in the SNPRM pertaining to requirements for emission laboratories which perform the Federal Test Procedure. EPA believes that a laboratory recognition program is no longer necessary because the responsibility for emission compliance in the new program will rest with the certificate holder. The certificate holder, as such, will be responsible for the validity and reliability of all testing performed on its nonconforming vehicles and, hence, should ensure that the laboratory that performs emission tests on its behalf is capable and reliable. As a result, EPA will discontinue maintaining lists of laboratories capable of performing the FTP which must be utilized when submitting test data to EPA. However, EPA may still conduct inspections and correlation testing at laboratories utilized by the ICI for certification testing as has been the practice for laboratories used by OEMs for certification testing.

It should be noted that since EPA clearly intended in the SNPRM that vehicles would be FTP-tested subsequent to their importation into the U.S., and not at laboratories outside the U.S., EPA is clarifying the regulation by inserting some explicit language to this effect in new §§ 85.1505(a)(2)(ii) and 85.1509(b)(2).

k. Emission labeling. EPA has clarified and made some minor modifications to the SNPRM provision regarding vehicle labeling. The changes require that the original production year and a vacuum hose diagram be included on the label and will provide valuable repair information to vehicle owners and mechanics.

¹⁶ Here model year is designated only for purposes of determining applicable emission standards and requirements which may vary by model year.

¹⁷ Vehicles produced under this certificate must comply with 1987 emission requirements.

4. Requirements for Vehicles Entering Under the New "Modification and Test" Provision

The fourth major part of the new imports program is the provision that permits vehicles six OP years old or older to be imported by certificate holders, at their option, under a new, more stringent "modification/test" procedure rather than under the certification provision. EPA believes that few vehicle models six OP years old or older are likely to be certified because the relatively smaller number of vehicles of that model likely to be imported would make it impractical or uneconomical to do so (see also discussion in Part VI below). EPA has decided to permit entry of these older vehicles under the revised "modification and test" procedure in part to provide a greater degree of model availability to consumers while still maintaining a primarily certification-based program. Moreover, EPA believes that many of the problems identified with the present program ultimately will be eliminated under this two-tier system given that: The majority of imported nonconforming vehicles are expected to be less than six OP years old, and thus, after the phase-in period, must be certified; during the phase-in period, the percentage of vehicles less than six OP years old that must be certified will increase year by year; the expertise obtained by ICIs in certifying certain models is expected to be transferred to modification and testing of other vehicles; the reduced number of vehicles eligible for modification/testing (both during and after the phase-in period) should decrease the incentive for deliberate abuse of, or risk of negligent noncompliance with, the mod/test requirements; and the new, more stringent mod/test procedures should reduce even further any risk of noncompliance with the emission standards.

EPA has chosen six OP years old as the appropriate vehicle age threshold (with certain exceptions during the phase-in period) for permitting vehicles to be optionally mod/tested after consideration of various age thresholds. EPA believes that, under the current program, a significant drop in the overall volume of mod/test imports occurs at six OP years. This is an indication that at this level certification begins to become unlikely for a number of models. (Based on EPA mod/test import data, vehicles that are six model years old are currently less than thirty-three per cent of those that are five model years old, while thereafter the percentages decrease less dramatically.) While EPA

believes this drop currently is heavily influenced by the existence of the five model year old policy (which is abolished by today's action), EPA believes that without this policy the drop-off would result somewhat later (not sooner). Given this uncertainty and the fact that the extra margin of increased model availability afforded by six OP years (as opposed to some higher year threshold) can be accommodated without potentially undermining the ultimate certification program (as discussed earlier), EPA believes six OP years is a reasonable threshold.

Certificate holders with vehicles entering under this provision are required, just as in the case of certified vehicles, to bear responsibility for their compliance with standards over the vehicles' useful lives. They also must meet requirements similar to those imposed for certified vehicles, including special assembly line inspections, recall, maintenance instructions, warranty, emissions labeling and fuel economy requirements (for comments on these requirements, see Part V.A.3, above). Moreover, all vehicles entering under the new modification and test procedure are required to comply with emission standards in effect at the time such vehicles are modified. This requirement ensures consistency with the approach used for certified vehicles. (This will be true as well for vehicles less than six OP years brought in under the modification/test option during the phase-in period.)

Although relatively less durability assurance is provided for "modification and test" vehicles, EPA believes such assurance is sufficient for various reasons. First, as proposed, the new program will permit only certificate holders with clearly defined responsibilities to import these vehicles. As indicated above, this will likely result in a transferral of expertise and technology from certified vehicles to "modification and test" vehicles (both during and after the phase-in period) so that the durability of these vehicles will approximate that of certification vehicles. Second, certificate holders are required to adjust the zero mile emission test results on each vehicle by a deterioration factor assigned by EPA and such adjusted results must comply with standards. (The existing "modification and test" procedure contains no such requirement.) Finally, EPA intends to conduct inspections and retests of these vehicles. As appropriate, when EPA determines that a certificate holder has improperly modified and/or tested any vehicle, or has failed to comply with any applicable provision of the rule, such as the record-keeping and

reporting requirements, EPA intends to apply the stringent sanctions provided for in this rule. Such sanctions include revocation or suspension of active certificates, denial of the privileges of certifying vehicles and/or denial of importing "modification and test" vehicles for an appropriate period of time.

The main elements of this option, and the major comments received and EPA changes to requirements proposed in the SNPRM for modification/test vehicles, are indicated below.

a. Vehicles eligible for modification/test. Although modification and testing is prohibited in all cases where a vehicle is less than six OP years old (except during the phase-in period), EPA has determined, in response to a comment provided by the Department of Defense (DOD), that this prohibition on the modification and test provision shall not be applicable in the case of certain vehicles purchased by military and other U.S. Government personnel stationed overseas that meet certain "special circumstances" criteria. DOD was concerned about military personnel who are prohibited from importing U.S. certified vehicles overseas or who are stationed in areas that do not have adequate repair facilities to service U.S. certified vehicles. DOD indicated that if nonconforming vehicles used by these military personnel were not allowed entry into the U.S., these individuals would experience particular hardship under the new rules. EPA agrees. Therefore, for nonconforming vehicles less than six OP years old, owned by military and other U.S. civilian government personnel in the circumstances outlined above, and if there is no ICI certificate which covers that model and OP year, the vehicle will be eligible for entry (through a certificate holder) under the modification and test provision. More specifically, the eligible vehicles are those privately owned vehicles purchased by Federal personnel eligible (under criteria established by those agencies) for shipment of their vehicles at U.S. Government expense in connection with a permanent change of assignment outside the continental U.S. The eligible personnel are those stationed in overseas areas (designated by those agencies) which either prohibit importation of U.S. certified vehicles or which do not have (as determined by those agencies) adequate repair facilities to service U.S. certified vehicles. EPA anticipates that the number of such vehicles imported each year will be small.

The SNPRM asked for comment on how new models should be treated in the final rule. Various OEMs argued that it was inequitable not to limit the importation of new models the first year since OEMs would have to certify these new models but ICIs would be able to import them under a mod/test program. AICA recommended that the mod/test provision not extend to new vehicles but only to those over two years old in order to ensure consistency with the California regulation and also avoid confusion among ICIs. One ICI said new models should be permitted to use a modification/testing procedure since it provides a good way for testing the market for models from countries, such as Portugal, for which the U.S. represents new markets.

As indicated above, EPA has decided ultimately (after the phase-in period) to limit modification/test to all vehicles at least six OP years old. Therefore, the OEM's concern over new models expressed in response to SNPRM Option 3 will be alleviated by the final rule. (See discussion of new models in phase-in period, Part V.C below.) EPA believes that allowing all new models to be imported under the modification/testing option on a permanent basis would greatly reduce the number of vehicles coming in under the certification option, which is the cornerstone of the final imports program. In that event, the long-term benefits expected from primary reliance on the certification option (as already discussed) would fail to materialize.

Finally, the SNPRM asked for comments on whether the modification/testing option should be limited to models *not* on a list of models for which certificates had already been obtained or which were imported in sufficient numbers to make certification economically practical. In light of the decision to limit that option (with exceptions during the phase-in period) to vehicles six or more OP years old, the concept of a "list" is no longer necessary. EPA expects that most of the models that would have been on such a list are or will be newer models that eventually will have to comply with the certification option under the revised final rule. Moreover, the revised final rule will avoid two problems that such a list would have created, namely: (1) What the proper threshold number should be for placing a model on the list; and (2) what to do about models initially placed on the list but which, over time, would be imported in such decreasing numbers that certification would no longer be economical or practical.

b. Model year. Various ICIs objected to EPA's proposal to advance the model year to the date of modification for all mod/test vehicles. AICA argued that EPA lacks statutory authority for this proposal; that nowhere in the Act is it suggested that the Administrator has the authority to discriminate among groups of vehicles within a class in the application of standards. AICA also argued that the method renders certain vehicles, such as carbureted, older vehicles, impossible to import since they cannot be modified to meet present model year standards.

The U.S. Small Business Administration also urged EPA to allow two years old and older cars to meet emission standards applicable to the model year in which they were originally manufactured rather than the year of modification because it is difficult to modify the older cars and, thus, a number would be excluded. USSBA also said the incremental air quality difference between the two requirements would be minimal.

EPA believes it has statutory authority for its approach to vehicle model year for emission compliance purposes. First, section 203(b) gives EPA broad discretion to determine the appropriate terms and conditions for importation of nonconforming vehicles. Moreover, section 202(b)(3) of the Act defines vehicle model year for certified vehicles:

"Model year" means the manufacturer's annual production period (as determined by the Administrator) which includes January, of such calendar year: Provided, that if the manufacturer has no annual production period, the term "model year" shall mean the calendar year.

EPA's certification regulations at 40 CFR 86.082-2 contain the same definition.

Presently, for certification purposes, EPA considers an ICI certificate holder's modification process as its production process. Therefore, the approach taken in the SNPRM is consistent with the Act, EPA's certification regulations and prior Agency practice. Moreover, EPA believes that many older vehicles, in particular carbureted models, can be modified to meet present model year standards. EPA bases this judgement, in part, on the fact that a number of engines produced in 1986 have existed in a generic sense since 1968 (with some modifications), the year the first Federal standards went into effect. No commenter provided data that would indicate that a 1968 or later vehicle cannot be successfully modified to meet the new standards.

c. The "P.E." provision. EPA had proposed in the SNPRM that certificate

holders' applications for final admission for each mod/test vehicle would require that the attestation that the vehicles are durable be signed by a professional engineer (P.E.) with emission control experience. Various commenters said that the P.E. provision provides little additional benefit. EPA concurs. Thus, EPA has not adopted this provision in today's action.

One commenter, AICA, suggested that a driveability evaluation for modification/test vehicles should be added in lieu of the P.E. provision so that any incentive to remove emission controls would be eliminated. EPA has decided not to impose a driveability evaluation requirement at this time. EPA intends to consider the issue of whether a driveability test for these vehicles is needed as experience is gained in implementing the new imports program.

5. Exemptions and Exclusions

The fifth major part of the new imports program consists of the provisions for ten different types of exemptions and exclusions. With the exception of the twenty OP year exemption, these have been adopted without substantive change from the SNPRM. Significant comments were received on three of them. These comments are summarized below. (The reasons for the elimination of the existing five model year old personal use exception and establishment of a twenty-year-old exemption are discussed in Part VII. below.)

a. Hardship exemptions. Today's action incorporates certain hardship exemptions to cover the following limited situations of severe hardship:

(a) Handicapped individuals who need a special vehicle unavailable in a certified configuration;

(b) Individuals who purchased a vehicle in a foreign country where resale is prohibited upon the departure of such an individual;

(c) Individuals emigrating from a foreign country to the U.S. in circumstances of severe hardship; and

(d) Other individuals in similar circumstances that give rise to a severe hardship, as approved by the Administrator.

EPA intends to grant such exemptions only for extraordinary circumstances and expects very few vehicles to qualify. Moreover, EPA requires approval of such exemptions prior to permitting the final admission of vehicles into the United States.

The SNPRM proposed approval prior to conditional admission along with the posting of a bond. EPA believes that given that approval is necessary prior to

entry, the provisions for conditional admission and bonding are unnecessary and, hence, the final rule eliminates them.

The California Air Resources Board (CARB) and the California Department of Justice (Cal Justice) were the only commenters objecting to EPA's proposed scope of coverage for this exemption. CARB said it could support a hardship exemption only for handicapped persons. Cal Justice opposed extending the hardship exemption to immigrants on the grounds that it is not among those specifically listed in section 203(b)(1) of the Act and, therefore, EPA is circumventing (and, therefore, undermining) the purpose of sections 202 and 203 of the Act which is to reduce the levels of vehicle emissions.

As indicated in the SAC, EPA believes it does have authority for this exemption pursuant to section 203(a)(1) of the Act which provides that EPA may promulgate regulations permitting persons to import vehicles not covered by certificates of conformity. No data were presented that indicated past abuse of the exemption. Therefore, EPA will provide for this exemption with the expectation that very few vehicles will qualify and there will be no significant impact on emissions.

EPA has deleted, however, one situation subcategory of the hardship provision proposed in the SNPRM which would have permitted entry to an individual owning a vehicle for some substantial period of time and who did not purchase the vehicle with the intention of importing it into the United States. EPA feels that the potential for abuse associated with this subcategory is too great and that all cases falling within this subcategory are not necessarily hardship situations justifying a blanket exemption. The remaining hardship exemption in this final rule still provides sufficient flexibility for specific cases of hardship within this subcategory.

b. Pre-certification exemption. This final rule provides that ICIs interested in obtaining a pre-certification exemption on a prototype vehicle for the purpose of product development, production method assessment and market promotion must apply to EPA, as required by regulations at 40 CFR 85.1706(b). To qualify as an ICI for purposes of this section, an ICI need not have imported vehicles previously but must have been designated a small volume manufacturer by EPA.

It has been the Agency's experience that while numerous ICIs have requested designation as a "small volume manufacturer," and even more have requested information concerning

the small volume certification program, relatively few importers have actually applied for a certificate of conformity. As a result, the Agency is concerned that some ICIs, because of their inexperience with the requirements of the certification process, may apply for the pre-certification exemption with the intention of certifying, and subsequent to importing a number of nonconforming vehicles under the exemption, decide not to pursue certification. EPA is particularly concerned because vehicles so imported might not be exported if they are required to be certified in order to remain in the U.S. Similarly, for vehicles that may be modified and tested, EPA is concerned that vehicles brought in under the exemption might not be brought into conformity under the provision for "modification and testing". Consequently, as proposed, EPA will require a bond for any "pre-certification" vehicle conditionally entered by an ICI which would be forfeited unless (1) a certificate of conformity is issued, (2) the vehicle is eligible for and, in fact, has been modified and tested in accordance with the modification and test provision under § 85.1509 or (3) the vehicle is exported within 180 days from the date of entry. EPA received no comments objecting to the bond provision. Additionally, each ICI could import no more than one vehicle for the purpose of pre-certification for each model of vehicle for which it is seeking certification.

Two ICIs commented that the exemption was too restrictive. One said EPA should determine the number of vehicles allowed under an exemption on a case by case basis while the other said that 10 vehicles would be reasonable. EPA disagrees and has decided to limit the availability to one vehicle for two reasons. First, current small volume procedures require the testing of only one prototype vehicle and, as discussed elsewhere, EPA expects that most importers will apply only for small volume certification. This is in contrast to large volume certification which requires one vehicle for durability testing and several other vehicles to be used as emission data vehicles. Second, EPA is concerned that this exemption could be abused and be used as a means to circumvent the requirements of the present program. Should the requirements for small volume certification change, EPA is willing to reconsider the appropriateness of more than one pre-certification exemption per engine family.

c. Diplomatic and foreign military exemption. The final rule continues EPA's exemption for nonconforming

vehicles imported by diplomatic and foreign military personnel. One commenter (California Department of Justice) (Cal Justice) opposed continuation of this exemption. In its opinion, the exemption is unauthorized by the Act since it is not among those specifically listed in section 203(b)(1). The commenter said the exemption was inconsistent with the purpose of sections 202 and 203 of the Act which is to reduce the levels of vehicle emissions. Cal Justice also said it is familiar with abuses in California, whereby members of foreign embassies are engaged in the business of importing and selling vehicles to residents. EPA has retained the exemption under authority of section 203(a)(1) which provides that EPA may promulgate regulations permitting persons to import vehicles not covered by certificates of conformity. Additionally, Cal Justice submitted no specific data indicating abuse of the exemption and EPA has no reason to believe significant abuse has occurred or will occur.

d. Other exemptions and exclusions. Additional comments received on the other proposed exemptions and exclusions are summarized and responded to in the SAC. These exemptions and exclusions are being promulgated as proposed. (See Part VII below for discussion of changes to EPA's enforcement policy.)

Two commenters requested clarification that the final rule was not intended to regulate LPG/LPN powered vehicles or light-duty engines. EPA agrees that this was not the intent of the SNPRM and language has been added to the definition of nonconforming vehicle or engine to clarify the coverage of the final rule.

6. Catalyst and O₂ Sensor-Equipped Vehicles

The sixth part of the new imports program expands the provision in the current imports regulations regarding catalyst-equipped vehicles covered by a certificate of conformity at the time of manufacture which have been driven outside the United States, Canada or Mexico. A proposed requirement to replace the O₂ sensor on O₂ sensor equipped vehicles has been added to take account of more current technology. Moreover, language has been added to include vehicles in the program which had been imported by ICIs and then brought into conformity in accordance with these regulations. The purpose of the regulations is to insure the replacement of catalysts and replacement of O₂ sensors on vehicles which may have been contaminated

with leaded gasoline. This requirement is still deemed necessary because unleaded gasoline is still not widely available outside North America. No comments were received on this proposal.

B. Clarification of Useful Life

The final rule contains a definition of useful life for imported nonconforming vehicles and engines. EPA finds it appropriate to confirm its long-standing interpretation or when useful life begins for imported nonconforming vehicles in light of a recent decision in a criminal case, *U.S. v. Strecker, et al.*, No. CR86-95TB (W.D.WA, April 3, 1987), in which the Court found that once an imported nonconforming vehicle is older than five years of age or has accumulated greater than 50,000 miles, it is no longer subject to the emission requirements of the Act.

EPA disagrees with the Court's holding in *Strecker*. EPA's position is that the useful life of an imported nonconforming vehicle or engine begins after modifications and/or tests are performed on the imported vehicle or engine in order to bring it into conformity with Federal emission requirements and after (1) the vehicle or engine is first resold after modification and/or testing, in the case of a vehicle which is owned by the certificate holder; or (2) in the case of a vehicle or engine not owned by the certificate holder, when the certificate holder transfers possession of the vehicle back to the owner after modification and/or test. EPA has applied this interpretation consistently to imported vehicles since the beginning of the nonconforming imports program.

The interpretive definition of useful life for light-duty vehicles contained in § 85.1502(14) of today's rule is consistent with EPA's past practice, as well as with the definitions of "useful life" contained in section 202(d) of the Act and § 86.084-2, in which useful life is defined as "a period of use" of five years or 50,000 miles, whichever occurs first. (Emphasis added.) Moreover, it is consistent with EPA's treatment of useful life for vehicles originally built in a U.S.-certified configuration. Under section 216(3) of the Clean Air Act, these vehicles are considered "new" and, hence, their useful lives begin to run, when transfer is made to the first ultimate purchaser, while imported nonconforming vehicles generally are defined as "new" when imported. EPA believes that the statutory definition indicates that Congress expected all "new" vehicles to meet Federal emission standards when operated in the United States. Thus, consistent with this expectation, EPA has always considered

the useful life of a U.S.-certified vehicle to begin at the time the "new" vehicle is transferred to the ultimate purchaser and the useful life of a new imported nonconforming vehicle to begin when the vehicle is transferred to the ultimate purchaser in the U.S. after modification and/or testing. The Court's ruling in *Strecker*, by contrast, would not fulfill this Congressional expectation since imported vehicles, not otherwise exempted, but beyond five years of age or 50,000 miles at the time of importation, would not be required—according to that Court—to comply with Federal emission standards.

Since EPA believes that the *Strecker* decision is incorrect and inconsistent with the Clean Air Act, EPA will not acquiesce in that decision. Instead, EPA will continue to follow its long-standing practice under the current rules and, as of July 1, 1988, under the revised rules.

C. Phase-in Period

EPA believes that it is appropriate to provide for a five year phase-in period for the new program during which certificate holders need not certify certain vehicles less than six OP years old and may, instead, modify and test them under the new, more stringent, modification/test procedures.¹⁸ A phase-in period is appropriate primarily in order to give ICIs, especially the large number of ICIs which are unfamiliar with the certification process, enough lead time to obtain certificates for vehicle models between one and six OP years old.

The regulation during the phase-in period (July 1988–December 1992) provides that vehicles of varying ages less than six OP years old may be modified and tested so long as the certificate holder possesses a "qualifying certificate" for a model of like make (i.e., originally produced by the same OEM) and fuel type (gasoline or diesel). More specifically, the final rule provides that in 1988, the first year the rule is effective, a certificate holder must obtain at least one certificate for a vehicle model originally produced in 1988 or 1987 (qualifying certificate) which then permits the certificate holder to modify/test vehicles originally produced by the OEM in 1983 through 1987 which are of the same make and fuel type as the model for which the qualifying certificate was obtained. The final rule then provides that in 1989, all vehicle models originally produced in 1988 through 1989 must be certified. Modification/test is then available only

for vehicles originally produced in 1984 through 1987 so long as they are of the same make and fuel type as the model for which the qualifying certificate was obtained. In each subsequent year of the phase-in, one additional OP model year (the then-current year) is required to be certified and modification/test availability decreases by one OP model year. Thus, as the phase-in period continues, more and more of the less than six OP years old vehicles will need to be certified until, by the end of the phase-in (December 31, 1992), all such newer vehicles will need to be certified.

In each of the subsequent years of the phase-in period, likely only one OP model year of the model needs to be certification tested; all later OP model years of that model required to be certified will likely be certified by means of existing "carry-over" certification procedures. For example, if a 1988 certificate is obtained for a model originally produced in 1987 (or 1988), the certificate holder may obtain (see requirements set forth in Advisory Circular No. 17F) a new 1989 certificate for the version of that model originally produced in 1987 (or 1988) by means of existing carry-over certification procedures. Should carry-over certification be obtained, no new testing is required for previously certified models, merely a short certification application. New testing must be performed only for the OP model year for each new model being certified for the first time (again assuming the requirements for carry-over certification have been met).

This phase-in period eliminates some unnecessary hardships that otherwise would be associated with ICIs having to certify many OP model years of the same model should a final rule contain either no phase-in period or one of lesser duration.¹⁹ These burdens would be especially onerous for ICIs given that (1) most, if not all, are small businesses and (2) the recent significant decrease in importation rates.²⁰ Moreover, the phase-in program will ensure that a reasonable number of models will continue to be available to consumers while ICIs are becoming familiar with the certification process.

On the other hand, the phase-in scheme would not seriously impede the change from the current (mod/test-based) program to the primarily

¹⁸ Presently, only a handful of ICIs hold certificates for older models, primarily those originally produced in 1985 and 1986.

¹⁹ Of course, as of July 1, 1988, any ICI holding a valid certificate may modification/test any imported nonconforming vehicle six or more OP years old.

²⁰ In 1986, the importation rate was 36,000 vehicles. In 1985, it was 68,000 vehicles and importations during January 1–May 31, 1987 indicate a 1987 importation rate of 28,000 vehicles.

certification-based program which is the cornerstone of the final rule. In fact, the phase-in program should facilitate a smooth transition since, as the phase-in progresses, EPA expects that an ever-increasing number of certificates will be obtained by ICI's. Thus, by the end of the phase-in period, the ICI's, as a whole, will have obtained substantial experience and expertise in complying with the certification process which should help EPA in administering the new program and in ensuring that the benefits of certification are fully realized.

Moreover, by further limiting the modification/testing of newer vehicles during the phase-in to models of the same make and fuel type as that covered in the "qualifying certificate," EPA intends to assure that ICI's have the experience and capability to correctly install emission control systems which are effective and durable in the modification/test vehicles. Specifically, this limitation will help ensure that the modifier has experience in working with that makes' designs, especially the emission control components and systems. EPA recognizes that certifying one engine family does not necessarily guarantee the capability of the ICI to modify other vehicles made by the same OEM. However, there are basic similarities throughout most OEM product lines in terms of hardware and electronic controls. (For example, Mercedes uses Bosch fuel systems throughout its gasoline product line.) Thus, successfully modifying and certifying vehicles within the same make and fuel type will better assure success in modifying/testing other vehicles of that make and fuel type. Thus, in EPA's judgment, this transitional phase-in program will not only avoid unnecessary and undue disruption of the imports industry, but will also help prevent many of the problems identified with the current program, especially as the phase-in period progresses.

VI. Rationale for not Selecting Other Certification-Based Options

As indicated in the SAC and above, EPA has considered other certification-based options during this rulemaking process. All of these have been discussed and responded to in the SAC. The major certification-based options proposed in the SNPRM and by commenters in response to the SNPRM and the reasons why EPA chose not to adopt them are as follows:

A. SNPRM Option 2

SNPRM Option 2 provided that all vehicles, except for certain specified

and narrow exemptions and exclusions, must be imported by certificate holders and that such certificate holders must modify their vehicles in accordance with their certificate of conformity. The final rule adopted today incorporates this requirement by 1993 for vehicles that are less than six OP years old. EPA has chosen not to require certification for vehicles older than five OP years since EPA believes that it is less likely that certificate holders will obtain certificates for older vehicle models because of the expected relatively small demand for such vehicles in the future.²¹ Thus, without some alternative to certification, consumers would not be able to obtain such older models in the United States.

In today's action, EPA has decided to institute a primarily certification-based program, to be phased-in starting in 1988, since it believes that such a program will ensure compliance of both certified and modification/test vehicles. As discussed in more detail in Parts III and IV D above, EPA believes that the more durable and better scrutinized certification designs will be transferred to modification/test vehicles.

EPA does not believe that the number of modification/test vehicles permitted under the program during and after the phase-in period will undermine the results EPA expects from the final rule's certification-based program. In fact, EPA estimates that approximately seventy-five percent (or more) of vehicles imported under this program will be covered by certificates of conformity by 1993.²²

B. SNPRM Option 3

As discussed earlier, SNPRM Option 3 also provided for a certification-based program with a provision for the importation of a limited number of modification/test vehicles which would provide an extra measure of model availability. Eligibility for modification/test was to be determined by reference to a list of models "not qualified for modification/test." The proposed list would have included certified models

and models whose historic import volumes were at least sixty vehicles.²³ The list was to be issued annually with the possibility of additional vehicle models being added each year.

After full consideration of this list mechanism, however, EPA has decided that the list would have created more administrative problems and confusion than originally anticipated. In particular, EPA is concerned that the complexities of the list could have led to a great deal of confusion as to what was eligible for importation, either because the list was not properly understood or an outdated list was used by the importer. As a result of such confusion, many individuals and ICIs might have purchased vehicles that could not have been imported into the U.S. This would have created obvious problems for the individuals or ICIs, as well as for EPA and U.S. Customs who would have had to explain that the vehicles could not be imported and to ensure that the vehicles were exported or destroyed.

Similarly, EPA is concerned that because of the complexity of the list, SNPRM Option 3, compared with other certification-based options, would have had additional administrative burdens associated with it for both EPA and U.S. Customs. This burden would have been the result of several factors:

- (1) A likely increase in persons desiring hardship exemptions for vehicles not qualified for importation but which were purchased because of misunderstandings over what could be imported,
- (2) An expected increase in the number and length of public correspondence and phone calls requesting explanations of the list concept and the contents of the list,
- (3) Resources necessary to create the list annually, and assure the list was timely distributed to U.S. Customs ports and other interested persons, and
- (4) An increase in administrative and enforcement resources necessary to assure that each modification/test vehicle is not a model on the list.

EPA believes that today's action fulfills much of the purpose of SNPRM Option 3 without its complexities and administrative burdens. As indicated above, SNPRM Option 3 was proposed as a means of providing some measure of model availability for vehicles that would likely not be certified. The program to be in place in 1993 also provides additional model availability for certain vehicles which are not

²¹ While there was significant demand for certain vehicle models greater than five model years old under EPA's five model year policy, this demand is expected to substantially decrease with today's newly enacted requirements that certificate holders modify and test, assure durability, offer warranties, etc. For these vehicles. At most, EPA estimates that demand for older vehicles will return to the pre-1981 level (in 1981 EPA instituted the Five model year old policy) of twenty-five percent of the nonconforming import total. The actual number could be lower.

²² This figure does not account for any vehicles six OP model years old and older which will be covered by certificates of conformity. While certification of these vehicles is not precluded by today's action, EPA expects few of these older vehicles to be certified.

²³ Sixty vehicles was the minimum number of vehicles EPA estimated as needed to make certification economically attractive.

certified. In fact, EPA believes that the final program will result in a somewhat larger percentage of modification/test vehicles being imported than would have been under SNPRM Option 3. In this way, model availability will be somewhat enhanced. Moreover, during the phase-in period, an even larger percentage of modification/test vehicles will be available.

Moreover, the criterion established by this final rule (i.e., vehicle age) to distinguish what vehicles are eligible for modification/test is clearly defined, not variable, and easy to understand and enforce. EPA expects that as a result many fewer individuals and ICIs will purchase vehicles which are ineligible for importation.

Finally, as discussed earlier, the final rule avoids at least two difficult and controversial questions raised by the "listing" proposal—i.e., what number to use as a "threshold" for placement on the list and what to do about listed vehicles no longer imported in sufficient numbers to warrant certification.

C. The "AICA Option"

This option would require certification for vehicles under two years old and allow modification/test for all vehicles over two years old. As with today's action, vehicles would still have to be imported by certificate holders.

AICA argued that its proposal will provide ICIs' "flexibility" to continue business operations under the new program while certification is underway. AICA also said that its proposal for limiting the mod/test program to vehicles over two years old would eliminate confusion between the California and Federal programs for ICIs.

AICA noted that its option would not be expected to shift the entire market to mod/test for vehicles over two years old for two reasons. First, much of the demand is for new vehicles. Second, a certificate holder is the only person who could utilize the new modification and test procedure and it would have more incentive than an importer under the current program to obtain a certificate of conformity in order to reduce testing costs.

EPA is concerned that the AICA option, if adopted as a permanent program, would expand the scope of a mod/test program beyond the final (post-1993) program which EPA has adopted today by increasing the incentive to import vehicles over two years old, thereby further increasing the numbers of mod/test vehicles.²⁴ This

could undermine on a long-term basis the effectiveness of this certification-based program and potentially create some of the enforcement problems associated with the current program. For example, using current importation data, EPA estimates that more vehicles would be modified/tested under AICA's option than would be modified in accordance with an ICI certificate of conformity, even given the expected substantial decline in the importation of vehicles five OP years old and older. (See note 22, *supra*.) By contrast, under the final program promulgated today, the number of vehicles imported under the certification procedure is eventually expected to be at least three times greater than the number imported under the revised mod/test procedure.

D. The U.S. Department of Justice Option

U.S. DOJ proposed requiring that each ICI have one certificate as a condition for bringing in any other cars using the mod/test procedure with no limitation on the number and types of vehicles which could be imported. Individuals could not import directly but would have to import through a certificate holder.

U.S. DOJ stated that minimal harmful effect on consumers would be achieved by allowing any certificate holder to mod/test any vehicle so long as it held at least one certificate. In this way, the certification process would serve as a screen to ensure that ICIs have an adequate level of competence and sophistication to properly modify a car. U.S. DOJ argued that the threat of the loss of the certificate would provide leverage to assure compliance.

However, EPA believes that the DOJ proposal, as a permanent program, would leave open the door for most vehicles to enter under a revised modification and test procedure. Thus, the importance of certification would be substantially diminished in the long run. Once a certificate is issued under the DOJ option, any vehicle of any make, model or model year, could be modification/tested. This would be similar to retaining a substantial portion of the present program indefinitely with many of its problems and, therefore, the option was not adopted as a long term solution. By contrast, the phase-in program adopted today is a short-term program with substantial restrictions on

modification/test program that has been adopted is ultimately limited to much older vehicles and EPA believes that the attractiveness of, and incentive to import, vehicles six or more OP years old will be substantially less than it would be for newer vehicles between two and six OP years old.

the types of newer vehicles that a certificate holder may modify/test.

E. U.S. Small Business Administration (USSBA) Option

USSBA agreed with the DOJ proposal but also proposed another option requiring certification for vehicles under two years old which could be imported only by certificate holders. Vehicles over two years old could be mod/tested and imported by anyone. USSBA argued that its proposal would alleviate the disproportionate impact on small business in that it would have the effect of allowing the larger importers to obtain certificates for new vehicles while still allowing smaller importers, modifiers and testers to remain in the market place. Also, this would allow individuals to continue importing and provide some form of personal exemption for military personnel.

For the reasons discussed above regarding the AICA and DOJ proposals, EPA believes that the U.S. SBA proposal would also clearly prevent the long-term benefits of a primarily certification-based program. Moreover, by allowing any individual to import under the mod/test procedure, USSBA's proposal would have even greater adverse effects than AICA's proposal. This is because many of the problems in the old program associated with individual importations would be expected to continue. In fact, the proposal essentially maintains the current program and, therefore, was not adopted.

F. U.S. Senator Rudman

Senator Rudman supported the AICA proposal but also recommended that EPA consider the idea of allowing ICIs to import vehicles for which certificates have already been issued to other ICIs as long as the vehicles are modified in accordance with the certificate. Each ICI would have the same responsibilities as the original certificate holder vis-a-vis the vehicles it imports and modifies but would be spared the expense of certification.

Senator Rudman said the AICA option would grant some short term flexibility and be consistent with California requirements. As a means of lowering importation costs, he proposed that ICIs be able to import and modify in accordance with another ICI's certificate.

Since Senator Rudman endorsed AICA's proposal, EPA's response to that proposal applies. Moreover, EPA believes that his suggestion of allowing some ICIs to circumvent the certification process by using the same technology as those models which have been certified

²⁴ EPA does not expect the same trend in the final (post-1993) program adopted today since the

by other importers has other problems associated with it. EPA is concerned that focusing responsibility on an entity other than the person holding the certificate for the model imported could result in improper modifications since the entity may lack necessary familiarity with the technology underlying the modifications. For instance, a less durable material might be used by the subsequent ICI or the internal specifications of a part might differ from the original, thus causing an adverse emission impact. Furthermore, the sanction of revoking the certificate for that model based on improper modifications would not be available against someone other than the person holding the certificate for that model.

VII. Rationale for Elimination of "Five Model Year Personal Use" Exceptions Policy

In today's action, EPA has decided to eliminate the "five model year personal use" provision of EPA's enforcement policy under the current program. However, EPA believes that some relaxation of requirements for much older vehicles is appropriate and, therefore, has chosen to exempt from emission compliance vehicles that are greater than twenty OP years old. As explained below, EPA has also considered, but not yet decided whether to eliminate the nonresident provision.

A. Five Year Personal Use Provision

The five model year old personal use policy permitted a first-time individual importer to import one nonconforming vehicle at least five model years old for personal use without a need to demonstrate conformity with Federal emission requirements. EPA originally implemented this enforcement policy in order to reduce the administrative burden on the Agency, particularly the review of test documentation, and to minimize the hardship to private individual importers unfamiliar with the imports requirements. See 48 FR 16485 (April 18, 1983). As a direct result of the establishment of the policy, an increasing percentage and number of five year old vehicles have been imported. Specifically, in 1981 when the policy was inaugurated, about 500 of these vehicles were imported, comprising about 25 percent of all nonconforming imports. In 1985, over 30,000 of these vehicles were imported, comprising almost 50 percent of all nonconforming imports.²⁵

EPA is eliminating the policy for two major reasons. First, the policy created a number of serious enforcement problems. The record contains numerous examples of criminal investigations of persons abusing the policy. EPA is aware of other such investigations and believes these investigations represent only a fraction of the actual abuse that exists. As the record discloses, the most common abuse is the falsification of entry documents so that the vehicles appear to have been imported by individuals who are eligible for the policy when in fact the vehicles were actually imported by commercial enterprises. EPA believes that this abuse is difficult to detect and, therefore, cannot easily be controlled by a greater enforcement effort.

Second, the policy potentially poses a threat to air quality. Several states, most notably California, which is most impacted by the importation of these nonconforming vehicles, submitted comments to the record indicating that the increase in the number of these vehicles being imported affects air quality (through the actual emission increases caused by these vehicles) and interferes with Inspection and Maintenance programs (by requiring additional resources needed for handling these vehicles—e.g., answering questions, tracking vehicles—which they argue could be better spent for training and enforcement.)

EPA has received considerable comment on the possible elimination of the "five model year old" policy both in response to the SNPRM and in response to the Workshop Notice. The comments are summarized in the SAC. Comments submitted in response to the SNPRM indicate that the only commenters now expressing support for the policy are individuals, most of whom directly benefit from the policy. They argue that the policy should be continued since it provides an equitable means for car collectors and other individuals to obtain vehicles of their choice at significantly reduced cost without having adverse effects on air quality. A few individuals were concerned that elimination of the policy would hurt small businesses who perform safety modifications on the vehicles since many vehicles would no longer be imported. Various OEMs, on the other hand, expressed opposition to the policy primarily because of adverse effects on new vehicle sales, problems associated with warranty claims and air quality or difficulty in enforcement. Only a few

ICIs have commented on this issue, with one opposing the exemption based on air quality considerations. As discussed above, various states have been consistently opposed to the policy.

EPA believes that arguments supporting the retention of the "five model year old" policy are not persuasive. The program adopted today by EPA should provide substantial model availability. The enforcement and air quality problems associated with the retention of the old policy make the elimination of the policy appropriate at this time. (These effects are also discussed in the Regulatory Flexibility Analysis (RFA) which has been placed in the docket.)

The SNPRM also invited comments on whether any personal use exemption based on the age of the vehicle ought to exist and on the appropriate constraints of such exemption. One commenter explicitly supported a ten model year old exemption to benefit collectors. EPA believes this is not appropriate for two reasons. First, EPA statistics indicate that presently over 25 percent of the vehicles being imported under the five model year policy are ten model years old or older. Given EPA's experience with the five model year policy, it is likely that such numbers could increase with a ten model year old exemption. Hence, EPA believes a ten year exemption, even given present importation rates, may pose some of the same enforcement and air quality problems associated with the present policy.

Second, certain exclusions and exemptions based on the age of the vehicles at the time of import are provided for in the final rule and in the Clean Air Act. For example, under sections 203(a)(1) and 216(3) of the Act, the prohibition against importation of nonconforming vehicles applies only to vehicles originally manufactured after the effective date of standards which would have been applicable to such vehicles. Given that no such standards existed for light-duty vehicles prior to 1968, a light-duty vehicle originally manufactured prior to January 1, 1968 may be imported by an individual without the need to bring the vehicle into compliance. Also, as indicated above, EPA is establishing an exemption from emission requirements for vehicles greater than twenty OP years old (see discussion in Part VII. B below). Thus, many collectors will be able to import desirable older vehicles.

Many of the individuals commenting on the SNPRM were military and overseas civilian personnel who (together with the U.S. Small Business

²⁵ EPA does not believe that there would be such an increase in importation of six OP years old or older vehicles (after the phase-in period) under the revised mod/test procedure, since the requirements

applicable to such vehicles (in contrast to the prior exemptions of five MY old personal use vehicles) are stringent enough to deter any such increase.

Administration) argued that even if the "five model year old" policy were eliminated, the military should be treated differently. Some proposed that the five model year policy be continued; others proposed that it be extended to them by means of a "grandfather" clause which would extend the policy to military personnel who had already purchased nonconforming vehicles anticipating using the policy at the end of their tour of duty.

These commenters presented three arguments for their position. The first contention was that the "five model year old" policy was originally intended for the military and only has been abused by others. Therefore, its elimination is not justified for the military. The second argument was that the military situation, in which personnel are stationed overseas for years, is a unique one and deserves special treatment or reward by the government; to do otherwise will affect morale. The third argument was that elimination of the provision will impose hardship on this group by requiring them to incur an additional \$3000 related to the cost of emission modification or forcing resale in Europe on short notice.

The same arguments were used to support the inclusion of a "grandfather" clause for the military if EPA decided not to retain the five model year old policy for the military.

EPA believes that the reasons for the need for eliminating the five model year policy are equally applicable here. No special treatment appears to be warranted simply because of military status.²⁶ While some individual military personnel submitted comments objecting to the abolition of the policy, the Department of Defense did not advocate a continuation of the exemption or the inclusion of a grandfather clause in their comments to the rulemaking. Additionally, the abolition of the policy will not go into effect until July 1, 1988, thus permitting military personnel to ship their vehicles back to the U. S. before abolition of the policy takes effect. Moreover, many commenters, who indicated the date of the end of their tour of duty, will not be affected by the policy's elimination because the end of their tour of duty precedes the effective date of the elimination of the policy.

B. Greater Than Twenty OP Years Old Exemption

While EPA has chosen to eliminate the five model year exemption in today's action and has rejected an exemption

for ten year old vehicles, it believes that some relief for older vehicles is appropriate. Hence, to the extent that vehicles are not excluded from the Act because they were manufactured prior to the effective date of standards for that vehicle class, EPA has chosen to create an exemption from emission compliance for vehicles that are greater than twenty OP years old. EPA believes an exemption for younger vehicles is not warranted. As indicated in Part VII. A. above, EPA believes that an exemption for much younger vehicles may result in unacceptable numbers of nonconforming vehicles being imported under this exemption. Also, many state Inspection/Maintenance programs regulate vehicles twenty years of age and under. Thus, an exemption for vehicles less than twenty OP years old could lead to increased failures by such vehicles to pass I/M tests, with resulting inconvenience and expense for owners of failed vehicles.

EPA believes, however, that an exemption for vehicles greater than twenty OP years old is particularly appropriate for two reasons. First, EPA expects little conflict with state Inspection/Maintenance programs since most of these programs do not regulate vehicles beyond twenty years of age. In fact, of those states that submitted comments to the docket expressing concerns over the air quality impacts and Inspection/Maintenance problems with the five model year old exemption, only Connecticut regulates vehicles greater than twenty years old (and only for one additional year).

Second, EPA believes that very few vehicles will be imported under this exemption so that overall air quality will not be impacted by this exemption.²⁷

EPA has required that the importation of vehicles entitled to this twenty OP year old exemption must be arranged through certificate holders. EPA believes that this provision is appropriate since certificate holders will be knowledgeable about import requirements and can facilitate the importation of these vehicles. Most importantly, EPA believes that certificate holders will be best able to ascertain the date of original production which is determinative of eligibility for the exemption. Additionally, EPA will receive greater assurance of accurate

representations of vehicle age given that certificate holders are subject to stringent sanctions under both the Act and these regulations for failing to do so.

C. Nonresident Policy Provision

This enforcement policy permitted nonresidents of the United States to import a nonconforming vehicle for personal use for not more than one year. Vehicles imported under this provision are not permitted to be sold in the United States.

As indicated in the SNPRM, EPA is concerned that vehicles admitted under this exemption are being resold in violation of EPA requirements. EPA lacks the administrative capability to monitor all the vehicles admitted under this exemption and, hence, detect the illegal resale of such vehicles. As shown in the SAC, all commenters agreed with EPA that this policy is being abused and cannot effectively be enforced.

EPA announced in the SNPRM that, for reasons outlined above, it was considering eliminating the provision. Since that time, however, EPA has become aware of two international treaties²⁸ to which the United States is a signatory that address the movement of vehicles among various countries. EPA is concerned that elimination of the provision may be inconsistent with the intent of the treaties and believes additional time is needed to consider the matter. Moreover, this provision is actually contained in Customs regulations as well as being an EPA policy. Therefore, EPA has decided that it is appropriate to defer final decision on what changes are needed to this provision, pending consultation with Customs, until such time as changes are made to Customs regulations at 19 CFR 12.73 (see note 1, *supra*).

VIII. Regulatory Flexibility

The Regulatory Flexibility Act of 1980 requires Federal agencies to identify potentially adverse impacts of Federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA). The Agency has prepared a final RFA for this rule, which has been placed in the public docket for this rulemaking.

²⁷ Given the substantial age of vehicles eligible for the exemption, EPA does not expect that existence of the exemption will create an incentive for persons to import significantly greater numbers of vehicles over twenty OP years old. Also, this exemption will not take effect until older vehicles are no longer entitled to the statutory exclusion based on the original date of manufacture discussed earlier in this notice. (See § 86.1511(e)(1) of today's action.)

²⁸ Customs Convention on the Temporary Importation of Private Road Vehicles opened for signature June 4, 1954, 8 U.S.T. 2097, T.I.A.S. No. 3943, entered into force December 15, 1957. Convention on the Regulation of Inter-American Automotive Traffic, opened for signature December 15, 1943, 61 Stat. 1129, T.I.A.S. No. 1567, entered into force October 29, 1946.

²⁶ It should be noted that this policy was not originally intended only for the military.

IX. Economic Impact

Section 3(b) of Executive Order 12291 requires EPA to determine whether a rule it intends to propose or to issue is a major rule and to prepare Regulatory Impact Analyses (RIAs) for all major rules. EPA has determined that this action is not a "major rule" requiring preparation of an RIA since it will not have an annual effect on the economy of \$100 million or more. Additionally, it will not result in a major increase in industry costs or prices. Finally, this action will not have a significant adverse effect on industry, competition, employment, investment, productivity, innovation or the ability of domestic businesses to compete with foreign companies since imported vehicles are a small portion of the total number of vehicles sold in the U.S. Therefore, an RIA has not been prepared. Potential economic effects, however, are addressed in the Regulatory Flexibility Analysis prepared in accord with the RFA requirements.

X. OMB Review

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA written response to those comments are available for public inspection at Public Docket EN-79-9 located in EPA's Central Docket Section (LE-131A), 401 M Street, SW., Washington, DC 20460.

XI. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and have been assigned an OMB control number 2060-0095.

XII. Judicial Review

The final actions described in this notice are made under the authority of sections 203, 206, 207, 208(a), and 301 of the Clean Air Act and are nationally applicable. Under section 307(b)(1) of the Clean Air Act, judicial review may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for judicial review must be filed on or before November 24, 1987. Judicial review may not be obtained in subsequent enforcement proceedings.

List of Subjects

40 CFR Part 85

Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 600

Electric power, Energy conservation, Gasoline, Labeling, Administrative practice and procedure, Fuel economy.

Dated: September 17, 1987.

Lee M. Thomas,
Administrator.

For reasons discussed in the preamble, 40 CFR Part 85, and 40 CFR Part 600 are amended as follows:

PART 85—[AMENDED]

1. Subpart P is revised to read as follows:

Subpart P—Importation of Motor Vehicles and Motor Vehicle Engines

Sec.

- 85.1501 Applicability.
- 85.1502 Definitions.
- 85.1503 General requirements for importation of nonconforming vehicles.
- 85.1504 Conditional admission.
- 85.1505 Final admission of certified vehicles.
- 85.1506 Inspection and testing of imported motor vehicles and engines.
- 85.1507 Maintenance of certificate holder's records.
- 85.1508 "In Use" inspections and recall requirements.
- 85.1509 Final admission of modification and test vehicles.
- 85.1510 Maintenance instructions, warranties, emission labeling and fuel economy requirements.
- 85.1511 Exemptions and exclusions.
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Subpart P—Importation of Motor Vehicles and Motor Vehicle Engines

Authority: Secs. 203, 206, 207, 208(a), and 301(a), Clean Air Act, as amended (42 U.S.C. 7422, 7525, 7541, 7542(a) and 7601(a)).

§ 85.1501 Applicability.

(a) Except where otherwise indicated, this subpart is applicable to motor vehicles and motor vehicle engines which are offered for importation or imported into the United States and for which the Administrator has promulgated regulations under Part 86 prescribing emission standards but which are not covered by certificates of conformity issued under section 206(a) of the Clean Air Act (i.e., which are nonconforming vehicles as defined

below), as amended, and Part 86 at the time of conditional importation. Compliance with regulations under this subpart shall not relieve any person or entity from compliance with other applicable provisions of the Clean Air Act.

(b) Regulations prescribing further procedures for importation of motor vehicles and motor vehicle engines into the Customs territory of the United States, as defined in 19 U.S.C. 1202, are set forth at 19 CFR 12.73.

§ 85.1502 Definitions.

As used in this subpart, all terms not defined herein have the meanings given them in 19 CFR 12.73, in the Clean Air Act, as amended, and elsewhere in Parts 85 and 86 of this chapter.

(1) *Act*. The Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

(2) *Administrator*. The Administrator of the Environmental Protection Agency.

(3) *Certificate of conformity*. The document issued by the Administrator under section 206(a) of the Act.

(4) *Certificate holder*. The entity in whose name the certificate of conformity for a class of motor vehicles or motor vehicle engines has been issued.

(5) *FTP*. The Federal Test Procedure at Part 86.

(6) *Independent commercial importer (ICI)*. An importer who is not an original equipment manufacturer (OEM) (see definition below) or does not have a contractual agreement with an OEM to act as its authorized representative for the distribution of motor vehicles or motor vehicle engines in the U.S. market.

(7) *Model year*. The manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year; *Provided*, That if the manufacturer has no annual production period, the term "model year" shall mean the calendar year in which a vehicle is modified. A certificate holder shall be deemed to have produced a vehicle or engine when the certificate holder has modified the nonconforming vehicle or engine.

(8) *Nonconforming vehicle or engine*. A motor vehicle or motor vehicle engine which is not covered by a certificate of conformity prior to final or conditional importation and which has not been finally admitted into the United States under the provisions of § 85.1505, § 85.1509 or the applicable provisions of § 85.1512. Excluded from this definition are vehicles admitted under provisions of § 85.1512 covering EPA approved manufacturer and U.S. Government

Agency catalyst and O₂ sensor control programs.

(9) *Original equipment manufacturer (OEM).* The entity which originally manufactured the motor vehicle or motor vehicle engine prior to conditional importation.

(10) *Original production (OP) year.* The calendar year in which the motor vehicle or motor vehicle engine was originally produced by the OEM.

(11) *Original production (OP) years old.* The age of a vehicle as determined by subtracting the original production year of the vehicle from the calendar year of importation.

(12) *Running changes.* Those changes in vehicle or engine configuration, equipment or calibration which are made by an OEM or ICI in the course of motor vehicle or motor vehicle engine production.

(13) *United States.* United States includes the Customs territory of the United States as defined in 19 U.S.C. 1202, and the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands.

(14) *Useful life.* A period of time/mileage as specified in Part 86 for a nonconforming vehicle which begins at the time of resale (for a motor vehicle or motor vehicle engine owned by the ICI at the time of importation) or release to the owner (for a motor vehicle or motor vehicle engine not owned by the ICI at the time of importation) of the motor vehicle or motor vehicle engine by the ICI after modification and/or test pursuant to § 85.1505 or § 85.1509.

(15) *Working day.* Any day on which Federal government offices are open for normal business. Saturdays, Sundays, and official Federal holidays are not working days.

§ 85.1503 General requirements for importation of nonconforming vehicles.

(a) A nonconforming vehicle or engine offered for importation into the United States must be imported by an ICI who is a current holder of a valid certificate of conformity unless an exemption or exclusion is granted by the Administrator under § 85.1511 of this subpart or the vehicle is eligible for entry under § 85.1512.

(b) Final admission shall not be granted unless:

(1) The vehicle or engine is covered by a certificate of conformity issued in the name of the importer under Part 86 and the certificate holder has complied with all requirements of § 85.1505; or

(2) The vehicle or engine is modified and emissions tested in accordance with the provisions of § 85.1509 and the

certificate holder has complied with all other requirements of § 85.1509; or

(3) The vehicle or engine is exempted or excluded under § 85.1511; or

(4) The vehicle was covered originally by a certificate of conformity and is otherwise eligible for entry under § 85.1512.

§ 85.1504 Conditional admission.

(a) A motor vehicle or motor vehicle engine offered for importation under § 85.1505, § 85.1509 or § 85.1512 may be conditionally admitted into the United States, but shall be refused final admission unless:

(1) At the time of conditional admission, the importer has submitted to the Administrator a written report that the subject vehicle or engine has been permitted conditional admission pending EPA approval of its application for final admission under § 85.1505, § 85.1509, or § 85.1512. This written report shall contain the following:

(i) Identification of the importer of the vehicle or engine and the importer's address and telephone number;

(ii) Identification of the vehicle or engine owner and the vehicle or engine owner's address, telephone number and taxpayer identification number;

(iii) Identification of the vehicle or engine;

(iv) Information indicating under what provision of these regulations the vehicle or engine is to be imported;

(v) Identification of the place where the subject vehicle or engine will be stored until EPA approval of the importer's application to the Administrator for final admission;

(vi) Authorization for EPA Enforcement Officers to conduct inspections or testing otherwise permitted by the Act or regulations thereunder;

(vii) Identification, where applicable, of the certificate by means of which the vehicle is being imported;

(viii) The original production year of the vehicle; and

(ix) Such other information as is deemed necessary by the Administrator.

(b) Such conditional admission shall not be under bond for a vehicle or engine which is imported under § 85.1505 or § 85.1509. A bond will be required for a vehicle or engine imported under applicable provisions of § 85.1512. The period of conditional admission shall not exceed 120 days. During this period, the importer shall store the vehicle or engine at a location where the Administrator will have reasonable access to the vehicle or engine for his/her inspection.

§ 85.1505 Final admission of certified vehicles.

(a) A motor vehicle or engine may be finally admitted into the United States upon approval of the certificate holder's application to the Administrator. Such application shall be made either by completing EPA forms or by submitting the data electronically to EPA's computer, in accordance with EPA instructions. Such application shall contain:

(1) The information required in § 85.1504(a);

(2) Information demonstrating that the vehicle or engine has been modified in accordance with a valid certificate of conformity. Such demonstration shall be made in one of the following ways:

(i) Through an attestation by the certificate holder that the vehicle or engine has been modified in accordance with the provisions of the certificate holder's certificate, and presentation to EPA of a statement by the appropriate OEM that the OEM will provide to the certificate holder and to EPA information concerning running changes to the vehicle or engine described in the certificate holder's application for certification, and actual receipt by EPA of notification by the certificate holder of any running changes already implemented by the OEM at the time of application and their effect on emissions; or

(ii) Through an attestation by the certificate holder that the vehicle or engine has been modified in accordance with the provisions of the certificate holder's certificate of conformity and that the certificate holder has conducted an FTP test, at a laboratory within the United States, that demonstrates compliance with Federal emission requirements on every third vehicle or third engine imported under that certificate within 120 days of entry, with sequencing of the tests to be determined by the date of importation of each vehicle or engine. Should the certificate holder have exceeded a threshold of 300 vehicles or engines imported under the certificate without adjustments or other changes in accordance with paragraph (a)(3) of this section, the amount of required FTP testing may be reduced to every fifth vehicle or engine.

In order to make a demonstration under paragraph (a)(2)(i) of this section, a certificate holder must have received permission from the Administrator to do so;

(3) The results of every FTP test which the certificate holder conducted on the vehicle or engine. Should a subject vehicle or engine have failed an FTP at

any time, the following procedures are applicable:

(i) The certificate holder may either:
(A) Conduct one FTP retest that involves no adjustment of the vehicle or engine from the previous test (e.g., adjusting the RPM, timing, air-to-fuel ratio, etc.) other than adjustments to adjustable parameters that, upon inspection, were found to be out of tolerance. When such an allowable adjustment is made, the parameter may be reset only to the specified (i.e., nominal) value (and not any other value within the tolerance band); or

(B) Initiate a change in production (running change) under the provisions of 40 CFR 86.084-14(c)(13) that causes the vehicle to meet Federal emission requirements.

(ii) If the certificate holder chooses to retest in accordance with paragraph (a)(3)(i)(A) of this section:

(A) Such retests must be completed no later than five working days subsequent to the first FTP test;

(B) Should the subject vehicle or engine fail the second FTP, then the certificate holder must initiate a change in production (a running change) under the provisions of 40 CFR 86.084-14(c)(13) that causes the vehicle to meet Federal emission requirements.

(iii) If the certificate holder chooses to initiate a change in production (a running change) under the provisions of 40 CFR 86.084-14(c)(13) that causes the vehicle to meet Federal requirements, changes involving adjustments of adjustable vehicle parameters (e.g., adjusting the RPM, timing, air/fuel ratio) must be changes in the specified (i.e., nominal) values to be deemed acceptable by EPA.

(iv) Production changes made in accordance with this section must be implemented on all subsequent vehicles or engines imported under the certificate after the date of importation of the vehicle or engine which gave rise to the production change.

(v) Commencing with the first vehicle or engine receiving the running change, every third vehicle or engine imported under the certificate must be FTP tested to demonstrate compliance with Federal emission requirements until, as in paragraph (a)(2)(ii) of this section, a threshold of 300 vehicles or engines imported under the certificate is exceeded, at which time the amount of required FTP testing may be reduced to every fifth vehicle or engine.

(vi) Reports concerning these running changes shall be made to both the Manufacturers Operations and Certification Divisions of EPA within ten working days of initiation of the running

change. The cause of any failure of an FTP shall be identified, if known;

(4) The applicable deterioration factor;

(5) The FTP results adjusted by the deterioration factor;

(6) Such other information that may be specified by applicable regulations or on the certificate under which the vehicle or engine has been modified in order to assure compliance with requirements of the Act;

(7) All information required under § 85.1510;

(8) An attestation by the certificate holder that the certificate holder is responsible for the vehicle's or engine's compliance with Federal emission requirements, regardless of whether the certificate holder owns the vehicle or engine imported under this section;

(9) The name, address and telephone number of the person who the certificate holder prefers to receive EPA notification under § 85.1505(c); and

(10) Such other information as is deemed necessary by the Administrator.

(b) EPA approval for final admission of a vehicle or engine under this section shall be presumed not to have been granted if a vehicle has not been properly modified to be in conformity in all material respects with the description in the application for certification or has not complied with the provisions of § 85.1505(a)(2) or its final FTP results, adjusted by the deterioration factor, if applicable, do not comply with applicable emission standards.

(c) Except as provided in § 85.1505(b), EPA approval for final admission of a vehicle or engine under this section shall be presumed to have been granted should the certificate holder not have received oral or written notice from EPA to the contrary within 15 working days of the date of EPA's receipt of the certificate holder's application under § 85.1505(a). Such EPA notice shall be made to an employee of the certificate holder. If application is made on EPA forms, the date on a certified mail receipt shall be deemed to be the official date of notification to EPA. If application is made by submitting the data electronically, the date of acceptance by EPA's computer shall be deemed to be the official date of notification to EPA. During this 15 working day period, the vehicle or engine must be stored at a location where the Administrator will have reasonable access to the vehicle or engine for his/her inspection.

§ 85.1506 Inspection and testing of imported motor vehicles and engines.

(a) In order to allow the Administrator to determine whether a certificate holder's production vehicles or engines comply with applicable emission requirements or requirements of this subpart, EPA Enforcement Officers are authorized to conduct inspections and/or tests of vehicles or engines imported by the certificate holder. EPA Enforcement Officers shall be admitted during operating hours upon demand and upon presentation of credentials to any of the following:

(1) Any facility where any vehicle or engine imported by the certificate holder under this subpart was or is being modified, tested or stored; and

(2) Any facility where any record or other document relating to modification, testing or storage of the vehicles or engines, or required to be kept by § 85.1507, is located.

EPA may require inspection or retesting of vehicles or engines at the test facility used by the certificate holder or at an EPA-designated testing facility, with transportation and/or testing costs to be borne by the certificate holder.

(b) Upon admission to any facility referred to in paragraph (a) of this section, any EPA Enforcement Officer shall be allowed during operating hours:

(1) To inspect and monitor any part or aspect of activities relating to the certificate holder's modification, testing and/or storage of vehicles or engines imported under this subpart;

(2) To inspect and make copies of any records or documents related to modification, testing and storage of a vehicle or engine, or required by § 85.1507; and

(3) To inspect and photograph any part or aspect of any such vehicle or engine and any component used in the assembly thereof.

(c) Any EPA Enforcement Officer shall be furnished, by those in charge of a facility being inspected, with such reasonable assistance as he/she may request to help him/her discharge any function listed in this subpart. A certificate holder shall cause those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to EPA (whether or not the certificate holder controls the facility).

(d) The requirements of paragraphs (a), (b) and (c) of this section apply whether or not the certificate holder owns or controls the facility in question. Noncompliance with the requirements of paragraphs (a), (b) and (c) may preclude an informed judgment that vehicles or engines which have been or are being

imported under this subpart by the certificate holder comply with applicable emission requirements or requirements of this subpart. It is the certificate holder's responsibility to make such arrangements as may be necessary to assure compliance with paragraphs (a), (b) and (c) of this section. Failure to do so, or other failure to comply with paragraphs (a), (b) and (c), may result in sanctions as provided for in the Act or § 85.1513(e).

(e) Duly designated Enforcement Officers are authorized to proceed ex parte to seek warrants authorizing the inspection or testing of the motor vehicles or motor vehicle engines described in paragraph (a) of this section whether or not the Enforcement Officer first attempted to seek permission from the certificate holder or facility owner to inspect such motor vehicles or motor vehicle engines.

(f) The results of the Administrator's test under this section shall comprise the official test data for the vehicle or engine for purposes of determining whether the vehicle or engine should be permitted final entry under § 85.1505 or § 85.1509.

(g) For purposes of this section:

(1) "Presentation of Credentials" shall mean display of the document designating a person as an EPA Enforcement Officer.

(2) Where vehicle storage areas or facilities are concerned, "operating hours" shall mean all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(3) Where facilities or areas other than those specified in paragraph (g)(2) of this section are concerned, "operating hours" shall mean all times during which the facility is in operation.

(4) "Reasonable assistance" includes, but is not limited to, clerical, copying, interpreting and translating services, and the making available on request of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer of how the facility operates and to answer his/her questions.

§ 85.1507 Maintenance of certificate holder's records.

(a) The certificate holder subject to any of the provisions of this subpart shall establish, maintain and retain for six years from the date of entry of a nonconforming vehicle or engine imported by the certificate holder, adequately organized and indexed records, correspondence and other documents relating to the certification, modification, test, purchase, sale, storage, registration and importation of

that vehicle or engine, including but not limited to:

(1) The declaration required by 19 CFR 12.73;

(2) Any documents or other written information required by a Federal government agency to be submitted or retained in conjunction with the certification, importation or emission testing of motor vehicles or motor vehicle engines;

(3) All bills of sale, invoices, purchase agreements, purchase orders, principal or agent agreements and correspondence between the certificate holder and the purchaser, of each vehicle or engine, and any agents of the above parties;

(4) Documents providing parts identification data associated with the emission control system installed on each vehicle or engine demonstrating that such emission control system was properly installed on such vehicle or engine;

(5) Documents demonstrating that, where appropriate, each vehicle or engine was emissions tested in accordance with the Federal Test Procedure.

(6) Documents providing evidence that the requirements of § 85.1510 have been met.

(7) Documents providing evidence of compliance with all relevant requirements of the Clean Air Act, the Energy Tax Act of 1978, and the Energy Policy and Conservation Act;

(8) Documents providing evidence of the initiation of the "15 day hold" period for each vehicle or engine imported pursuant to § 85.1505 or § 85.1509;

(9) For vehicles owned by the ICI at the time of importation, documents providing evidence of the date of sale subsequent to importation, together with the name, address and telephone number of the purchaser, for each vehicle or engine imported pursuant to § 85.1505 or § 85.1509;

(10) For vehicles not owned by the ICI at the time of importation, documents providing evidence of the release to the owner subsequent to importation for each vehicle or engine imported pursuant to § 85.1505 or § 85.1509; and

(11) Documents providing evidence of the date of original manufacture of the vehicle or engine.

(b) The certificate holder is responsible for ensuring the maintenance of records required by this section, regardless of whether facilities used by the certificate holder to comply with requirements of this subpart are under the control of the certificate holder.

§ 85.1508 "In Use" inspections and recall requirements.

(a) Vehicles or engines which have been imported, modified and/or FTP tested by a certificate holder pursuant to § 85.1505 or § 85.1509 may be inspected and emission tested by EPA throughout the useful lives of the vehicles or engines.

(b) Certificate holders shall maintain for six years, and provide to EPA upon request, a list of owners of all vehicles or engines imported by the certificate holder under this subpart.

(c) A certificate holder will be notified whenever the Administrator has determined that a substantial number of a class or category of the certificate holder's vehicles or engines, although properly maintained and used, do not conform to the regulations prescribed under section 202 when in actual use throughout their useful lives (as determined under section 202(d)). After such notification, the Recall Regulations at Part 85, Subpart S, shall govern the certificate holder's responsibilities and references to a manufacturer in the Recall Regulations shall apply to the certificate holder.

§ 85.1509 Final admission of modification and test vehicles.

(a) Except as provided in paragraphs (b), (c), (d), (e), and (f), a motor vehicle or motor vehicle engine may be imported under this section by a certificate holder possessing a currently valid certificate of conformity only if:

(1)(i) The vehicle or engine is six OP years old or older; or

(ii) The vehicle was owned, purchased and used overseas by military or civilian employees of the U.S. Government and

(A) An ICI does not hold a currently valid certificate for that particular vehicle; and

(B) The Federal agency employing the owner of such vehicle determines that such owner is stationed in an overseas area which either prohibits the importation of U.S.-certified vehicles or which does not have adequate repair facilities for U.S.-certified vehicles; and

(C) The Federal agency employing the personnel owning such vehicles determines that such vehicles are eligible for shipment to the United States at U.S. Government expense; and

(2) The certificate holder's name has not been placed on a currently effective EPA list of certificate holders ineligible to import such modification/test vehicles, as described in paragraph (j) of this section.

(b) In calendar year 1988, a motor vehicle or motor vehicle engine originally produced in calendar years

1983 through 1987 may be imported under this section by a certificate holder if:

(1) The certificate holder possesses a currently valid certificate of conformity for a vehicle or engine model originally produced in calendar years 1987 or 1988 and the make (i.e., the OEM) and fuel type of such certified model is the same as the make and fuel type of the vehicle or engine being imported under this section; and

(2) The certificate holder's name has not been placed on a currently effective EPA list of certificate holder's ineligible to import such modification/test vehicles, as described in paragraph (j) of this section.

(c) In calendar year 1989, a motor vehicle or motor vehicle engine originally produced in calendar years 1984 through 1987 may be imported under this section by a certificate holder if:

(1) The certificate holder possesses a currently valid certificate of conformity for a vehicle or engine model originally produced in calendar years 1988 or 1989 and the make and fuel type of such certified model is the same as the make and fuel type of the vehicle or engine being imported under this section; and

(2) The certificate holder's name has not been placed on a currently effective EPA list of certificate holders ineligible to import such modification/test vehicles, as described in paragraph (j) of this section.

(d) In calendar year 1990, a motor vehicle or motor vehicle engine originally produced in calendar years 1985 through 1987 may be imported under this section by a certificate holder if:

(1) The certificate holder possesses a currently valid certificate of conformity for a vehicle or engine model originally produced in calendar years 1989 or 1990 and the make and fuel type of such certified model is the same as the make and fuel type of the vehicle or engine being imported under this section; and

(2) The certificate holder's name has not been placed on a currently effective EPA list of certificate holders ineligible to import such modification/test vehicles, as described in paragraph (j) of this section.

(e) In calendar year 1991, a motor vehicle or motor vehicle engine originally produced in calendar years 1986 and 1987 may be imported under this section by a certificate holder if:

(1) The certificate holder possesses a currently valid certificate of conformity for a vehicle or engine model originally produced in calendar years 1990 or 1991 and the make and fuel type of such certified model is the same as the make

and fuel type of the vehicle or engine being imported under this section; and

(2) The certificate holder's name has not been placed on a currently effective EPA list of certificate holders ineligible to import such modification/test vehicles, as described in paragraph (j) of this section.

(f) In calendar year 1992, a motor vehicle or motor vehicle engine originally produced in calendar year 1987 may be imported under this section by a certificate holder if:

(1) The certificate holder possesses a currently valid certificate of conformity for a vehicle or engine model originally produced in calendar year 1991 or 1992 and the make and fuel type of such certified model is the same as the make and fuel type of the vehicle or engine being imported under this section; and

(2) The certificate holder's name has not been placed on a currently effective EPA list of certificate holders ineligible to import such modification/test vehicles, as described in paragraph (j) of this section.

(g) A motor vehicle or motor vehicle engine conditionally imported under this section may be finally admitted into the United States upon approval of the certificate holder's application to the Administrator. Such application shall be made either by completing EPA forms or, if the applicant chooses, by submitting the data electronically to EPA's computer, in accordance with EPA instructions. Such application shall contain:

(1) The identification information required in § 85.1504;

(2) An attestation by the certificate holder that the vehicle or engine has been modified and/emission tested in accordance with the FTP at a laboratory within the United States;

(3) The results of any FTP;

(4) The deterioration factor assigned by EPA;

(5) The FTP results adjusted by the deterioration factor;

(6) An attestation by the certificate holder that emission testing and development of fuel economy data as required by § 85.1510 was performed after the vehicle or engine had been modified to conform to Department of Transportation safety standards;

(7) All information required under § 85.1510;

(8) An attestation by the certificate holder that the certificate holder is responsible for the vehicle's or engine's compliance with Federal emission requirements, regardless of whether the certificate holder owns the vehicle or engine imported under this section.

(9) The name, address and telephone number of the person who the

certification holder prefers to receive EPA notification under § 85.1509(i).

(10) For any vehicle imported in accordance with paragraphs (b) through (f), an attestation by the certificate holder that the vehicle is of the same make and fuel type as the vehicle covered by a qualifying certificate as described in paragraphs (b) through (f), as applicable.

(11) Such other information as is deemed necessary by the Administrator.

(h) EPA approval for final admission of a vehicle or engine under this section shall be presumed not to have been granted if a vehicle's final FTP results, adjusted by the deterioration factor, if applicable, do not comply with applicable emission standards.

(i) Except as provided in § 85.1509(h), EPA approval for final admission of a vehicle or engine under this section shall be presumed to have been granted should the certificate holder not have received oral or written notice from EPA to the contrary within 15 working days of the date of EPA's receipt of the certificate holder's application under § 85.1509(g). Such EPA notice shall be made to an employee of the certificate holder. If application is made on EPA form, the date of a certified mail receipt shall be deemed to be the official date of notification to EPA. If application is made by submitting the data electronically, the date of acceptance by EPA's computer shall be deemed to be the official date of notification to EPA. During this 15 working day period, the vehicle or engine must be stored at a location where the Administrator will have reasonable access to inspect the vehicle or engine.

(j) EPA list of certificate holders ineligible to import vehicles for modification/test. EPA shall maintain a current list of certificate holders who have been determined to be ineligible to import vehicles or engines under this section. Such determinations shall be made in accordance with the criteria and procedures in § 85.1513(e) of this subpart.

(k) Inspections. Prior to final entry, vehicles or engines imported under this section are subject to special inspections as described in § 85.1506 with these additional provisions:

(1) If a significant number of vehicles imported by a certificate holder fail to comply, in the judgment of the Administrator, with emission requirements upon inspection or retest, or if the certificate holder fails to comply with any provision of these regulations that pertain to vehicles imported pursuant to § 85.1509, the certificate holder may be placed on the

EPA list of certificate holders ineligible to import vehicles under this section as specified in paragraph (j) of this section and § 85.1513(e);

(2) Individual vehicles or engines which fail an FTP retest or inspection must be repaired and retested, as applicable, to demonstrate compliance with emission requirements before final admission.

(3) Unless otherwise specified by EPA, the costs of all retesting under this subsection, including transportation, shall be borne by the certificate holder.

(l) *In-Use inspection and testing.* Vehicles or engines imported under this section may be tested or inspected by EPA at any time during the vehicle's or engine's useful life in accordance with § 85.1508 (a) and (b). If, in the judgment of the Administrator, a significant number of properly maintained and used vehicles or engines imported by the certificate holder fail to meet emission requirements, the name of the certificate holder may be placed on the EPA list of certificate holders ineligible to import vehicles under the modification/test provision as specified in paragraph (j) of this section and § 85.1513(e).

§ 85.1510 Maintenance instructions, warranties, emission labeling and fuel economy requirements.

The provisions of this section are applicable to all vehicles or engines imported under the provisions of § 85.1505 and 85.1509.

(a) *Maintenance Instructions.* (1) The certificate holder shall furnish to the purchaser or to the owner of each vehicle or engine imported under § 85.1505 or § 85.1509 of this section, written instructions for the maintenance and use of the vehicle or engine by the purchaser or owner. Each application for final admission of a vehicle or engine shall provide an attestation that such instructions have been or will be (if the ultimate producer is unknown) furnished to the purchaser or owner of such vehicle or engine at the time of sale or redelivery. The certificate holder shall maintain a record of having furnished such instructions.

(2) For each vehicle or engine imported under § 85.1509, the maintenance and use instructions shall be maintained in a file containing the records for that vehicle or engine.

(3) Such instructions shall not contain requirements more restrictive than those set forth in Part 86 (Maintenance Instructions), and shall be in sufficient detail and clarity that an automotive mechanic of average training and ability can maintain or repair the vehicle or engine.

(4) Certificate holders shall furnish with each vehicle or engine a list of the emission control parts, and emission-related parts added by the certificate holder and the emission control and emission related parts furnished by the OEM.

(b) *Warranties.* (1) Certificate holders shall provide to vehicle or engine owners emission warranties identical to those required by sections 207 (a) and (b) of the Act and 40 CFR Part 85, Subpart V. The warranty period for each vehicle or engine shall commence on the date the vehicle or engine is delivered by the certificate holder to the ultimate purchaser or owner.

(2) Certificate holders shall ensure that these warranties:

(i) Are insured by a prepaid mandatory service insurance policy underwritten by an independent insurance company;

(ii) Are transferable to each successive owner for the periods specified in sections 207 (a) and (b); and

(iii) Provide that in the absence of a certificate holder's facility being reasonably available (i.e., within 50 miles) for performance of warranty repairs, such warranty repairs may be performed anywhere.

(3) Certificate holders shall attest in each application for final admission that such warranties will be or have been provided. Copies of such warranties shall be maintained in a file containing the records for that vehicle or engine.

(c) *Emission labeling.* (1) The certificate holder shall affix a permanent legible label in a readily visible position in the engine compartment. The label shall meet all the requirements of Part 86 and shall contain the following statement "This vehicle or engine was originally produced in (month and year of original production). It has been imported and modified by (certificate holder's name, address and telephone number) to conform to U.S. emission regulations applicable to the (year) model year." If the vehicle or engine is owned by the certificate holder at the time of importation, the label shall also state "this vehicle or engine is warranted for five years or 50,000 miles from the date of purchase, whichever comes first." If the vehicle or engine is not owned by the certificate holder at the time of importation, the label shall state "this vehicle or engine is warranted for five years or 50,000 miles from the date of release to the owner, whichever comes first." For vehicles imported under § 85.1509, the label shall clearly state in bold letters that "this vehicle has not been manufactured under a certificate of conformity but meets EPA air pollution

control requirements under a modification/test program." In addition, for all vehicles, the label shall contain the vacuum hose routing diagram applicable to the vehicles.

(2) As part of the application to the Administrator for final admission of each individual vehicle or engine under § 85.1509, the certificate holder shall maintain a copy of such label for each vehicle or engine in a file containing the records for that vehicle or engine. Certificate holders importing under § 85.1505 or § 85.1509 shall attest to compliance with the above labeling requirements in each application for final admission.

(d) *Fuel economy labeling.* (1) The certificate holder shall affix a fuel economy label that complies with the requirements of 40 CFR Part 600, Subpart D.

(2) For purposes of generating the fuel economy data to be incorporated on such label, each vehicle imported under § 85.1509 shall be considered to be a separate model type.

(3) As part of the application to the Administrator for final admission of each individual vehicle or engine imported under § 85.1509, the certificate holder shall maintain a copy of such label for each vehicle or engine in a file containing the records for that vehicle or engine. In each application for final admission of a vehicle or engine under § 85.1505, or § 85.1509, the certificate holder shall attest to compliance with the above labeling requirements.

(e) *Gas guzzler tax.* (1) Certificate holders shall comply with any applicable provisions of the Energy Tax Act of 1978, 26 U.S.C. 4064, for every vehicle imported under § 85.1505 and § 85.1509.

(2) For vehicles not owned by the certificate holder, the certificate holder shall furnish to the vehicle owner applicable IRS forms (currently numbered 720 (Quarterly Federal Excise Tax) and 6197 (Fuel Economy Tax Computation Form)) which relate to the collection of the gas guzzler tax under the Energy Tax Act of 1978, 26 U.S.C. 4064.

(3) As part of the certificate holder's application to EPA for final admission of each vehicle imported under § 85.1509, the certificate holder shall furnish any fuel economy data required by the Energy Tax Act of 1978, 15 U.S.C. 4064.

(f) *Corporate Average Fuel Economy (CAFE).* (1) Certificate holders shall comply with any applicable CAFE requirements of the Energy Policy and Conservation Act, 15 U.S.C. 2001 et seq., and 40 CFR Part 600, for all vehicles imported under § 85.1505 and 85.1509.

§ 85.1511 Exemptions and exclusions.

(a) Individuals, as well as certificate holders, shall be eligible for importing vehicles into the United States under the provisions of this section, unless otherwise specified.

(b) Notwithstanding any other requirements of this subpart, a motor vehicle or motor vehicle engine entitled to one of the temporary exemptions of this paragraph may be conditionally admitted into the United States if prior written approval for such conditional admission is obtained from the Administrator. Conditional admission shall be under bond. A written request for approval from the Administrator shall contain the identification required in § 85.1504(a)(1) (except for § 85.1504(a)(1)(v)) and information that indicates that the importer is entitled to the exemption. Noncompliance with provisions of this section may result in the forfeiture of the total amount of the bond or expropriation of the vehicle or engine. The following temporary exemptions are permitted by this paragraph:

(1) *Exemption for repairs or alterations.* Owners of fleet vehicles or engines may import such vehicles or engines solely for purposes of repairs or alterations. Such vehicles or engines may not be registered or licensed in the United States for use on public roads and highways. They may not be sold or leased in the United States and must be exported upon completion of the repairs or alterations.

(2) *Testing exemption.* Testing vehicles or engines may be imported by any person subject to the requirements of 40 CFR 85.1705 and 85.1708. Test vehicles or engines may be operated on and registered for use on public roads or highways provided that the operation is an integral part of the test. The exemption shall be limited to a period not exceeding one year from the date of importation unless a request is made by the appropriate importer concerning the vehicle in accordance with § 85.1705(f) for a subsequent one-year period.

(3) *Precertification exemption.* Prototype vehicles for use in applying to EPA for certification may be imported by independent commercial importers subject to applicable provisions of 40 CFR 85.1706 and the following requirements:

(i) No more than one prototype vehicle for each engine family for which an independent commercial importer is seeking certification shall be imported by each independent commercial importer.

(ii) Unless a certificate of conformity is issued for the prototype vehicle, the

total amount of the bond shall be forfeited or the vehicle must be exported within 180 days from the date of entry.

(4) *Display exemptions.* (i) Vehicles or engines intended solely for display may be imported subject to the requirements of 40 CFR 85.1707.

(ii) Display vehicles or engines may be imported by any person. Display vehicles or engines may not be sold in the United States and may not be registered or licensed for use on or operated on public roads or highways in the United States, unless an applicable certificate of conformity has been received.

(c) Notwithstanding any other requirements of this subpart, a motor vehicle or motor vehicle engine may be finally admitted into the United States under this paragraph if prior written approval for such final admission is obtained from the Administrator. Conditional admission of these vehicles is not permitted for the purpose of obtaining written approval from the Administrator. A request for approval shall contain the identification information required in § 85.1504(a)(1) (except for § 85.1504(a)(1)(v)) and information that indicates that the importer is entitled to the exemption or exclusion. The following exemptions or exclusions are permitted by this paragraph:

(1) *National security exemption.* Vehicles may be imported under the national security exemption found at 40 CFR 85.1708. Only persons who are manufacturers may import a vehicle under a national security exemption.

(2) *Hardship exemption.* The Administrator may exempt on a case-by-case basis certain motor vehicles from Federal emission requirements to accommodate unforeseen cases of extreme hardship or extraordinary circumstances. Some examples are as follows:

(i) Handicapped individuals who need a special vehicle unavailable in a certified configuration;

(ii) Individuals who purchase a vehicle in a foreign country where resale is prohibited upon the departure of such as individual;

(iii) Individuals emigrating from a foreign country to the U.S. in circumstances of severe hardship.

(d) Foreign diplomatic and military personnel may import nonconforming vehicles without bond. At the time of admission, the importer shall submit to the Administrator the written report required in § 85.1504(a)(1) (except for information required by § 85.1504(a)(1)(v)). Such vehicles may be sold in the United States.

(e) *Racing exclusion.* Racing vehicles may be imported by any person provided the vehicles meet one or more of the exclusion criteria specified in 40 CFR § 85.1703. Racing vehicles may not be registered or licensed for use on or operated on public roads and highways in the United States.

(f) *Exclusions/exemptions based on date of original manufacture.* (1) Notwithstanding any other requirements of this subpart, the following motor vehicles or motor vehicle engines are excluded from the requirements of the Act in accordance with section 216(3) of the Act and may be imported by any person:

(i) Gasoline-fueled light-duty vehicles and light-duty trucks originally manufactured prior to January 1, 1968.

(ii) Diesel-fueled light-duty vehicles originally manufactured prior to January 1, 1975.

(iii) Diesel-fueled light-duty trucks originally manufactured prior to January 1, 1976.

(iv) Motorcycles originally manufactured prior to January 1, 1978.

(v) Gasoline-fueled and diesel-fueled heavy-duty engines originally manufactured prior to January 1, 1970.

(2) Notwithstanding any other requirements of this subpart, a motor vehicle or motor vehicle engine not subject to an exclusion under § 85.1511(f)(1) but greater than twenty OP years old is entitled to an exemption from the requirements of the Act, provided that it is imported into the United States by a certificate holder. At the time of admission, the certificate holder shall submit to the Administrator the written report required in § 85.1504(a)(1) (except for information required by § 85.1504(a)(1)(v)).

(g) Applications for exemptions and exclusions provided for in paragraphs (b) and (c) of this section shall be mailed to: Investigation/Imports Section (EN-340F), Office of Mobile Sources, U.S. Environmental Protection Agency, Washington, DC 20460.

(h) Vehicles conditionally or finally admitted under paragraphs (b)(2), (b)(4), (c)(1), (c)(2), and (f)(2) of this section must still comply with all applicable requirements, if any, of the Energy Tax Act of 1978, the Energy Policy and Conservation Act and any other Federal or state requirements.

§ 85.1512 Admission of catalyst and O₂ sensor-equipped vehicles.

(a) (1) Notwithstanding other provisions of this subpart, any person may conditionally import a vehicle which:

(i) Was covered by a certificate of conformity at the time of original manufacture or had previously been admitted into the United States under § 85.1505 or § 85.1509 (after June 30, 1988).

(ii) Was certified, or previously admitted under § 85.1505 or § 85.1509 (after June 30, 1988), with a catalyst emission control system and/or O₂ sensor;

(iii) Is labeled in accordance with 40 CFR Part 86, Subpart A or, where applicable, § 85.1510(c); and

(iv) Has been driven outside the United States, Canada and Mexico or such other countries as EPA may designate.

(2) Such vehicle must be entered under bond pursuant to 19 CFR 12.73 unless it is included in a catalyst and O₂ sensor control program approved by the Administrator upon such terms as may be deemed appropriate. Catalyst and O₂ sensor programs conducted by manufacturers may be approved each model year.

(b) For the purpose of this section, "catalyst and O₂ sensor control program" means a program instituted and maintained by a manufacturer, or any U.S. Government Agency for the purpose of preservation, replacement, or initial installation of catalytic converters and cleaning and/or replacement of O₂ sensors and, if applicable, restricted fuel filler inlets.

(c) For the purpose of this section, "driven outside the United States, Canada and Mexico" does not include mileage accumulated on vehicles solely under the control of manufacturers for the purpose of vehicle testing and adjustment, and preparation for shipment to the United States.

(d) Vehicles conditionally imported pursuant to this section and under bond must be modified in accordance with the certificate of conformity applicable at the time of manufacture. In the case of vehicles previously imported under § 85.1509 or § 85.1504 (prior to July 1, 1988), the replacement catalyst and O₂ sensor, if applicable, must be equivalent (in terms of emission reduction) to the original catalyst and O₂ sensor. Such vehicles may be granted final admission upon application to the Administrator, on forms specified by the Administrator. Such application shall contain the information required in § 85.1504(a)(1) (i) through (v) and shall contain both an attestation by a qualified mechanic that the catalyst has been replaced and the O₂ sensor has been replaced, if necessary, and that both parts are functioning properly, and a copy of the invoice for parts and labor.

§ 85.1513 Prohibited acts; penalties.

(a) The importation of a motor vehicle or motor vehicle engine which is not covered by a certificate of conformity other than in accordance with this subpart and the entry regulations of the U.S. Customs Service at 19 CFR 12.73 is prohibited. Failure to comply with this section is a violation of section 203(a)(1) of the Act.

(b) Unless otherwise permitted by this subpart, during a period of conditional admission, the importer of a vehicle shall not:

(1) Operate the vehicle on streets or highways,

(2) Sell or offer the vehicle or engine for sale, or

(3) Store the vehicle on the premises of a dealer.

(c) Any vehicle or engine conditionally admitted pursuant to § 85.1504, § 85.1511 or § 85.1512, and not granted final admission within 120 days of such conditional admission, or within such additional time as the U.S. Customs Service may allow, shall be deemed to be unlawfully imported into the United States in violation of section 203(a)(1) of the Act, unless such vehicle or engine shall have been delivered to the U.S. Customs Service for export or other disposition under applicable Customs laws and regulations. Any vehicles or engines not so delivered shall be subject to seizure by the U.S. Customs Service.

(d) Any importer who violates section 203(a)(1) of the Act is subject to a civil penalty under section 205 of the Act of not more than \$10,000 for each vehicle or engine subject to the violation. In addition to the penalty provided in the Act, where applicable, under the exemption provisions of § 85.1511(b), or under § 85.1512, any person or entity who fails to deliver such vehicle or engine to the U.S. Customs Service is liable for liquidated damages in the amount of the bond required by applicable Customs laws and regulations.

(e) (1) A certificate holder whose vehicles or engines imported under § 85.1505 or § 85.1509 fail to conform to Federal emission requirements after modification and/or testing under the Federal Test Procedure (FTP) or who fails to comply with applicable provisions of this subpart, may, in addition to any other applicable sanctions and penalties, be subject to any, or all, of the following sanctions:

(i) The certificate holder's currently held certificates of conformity may be revoked or suspended;

(ii) The certificate holder may be deemed ineligible to apply for new certificates for up to 3 years; and

(iii) The certificate holder may be deemed ineligible to import vehicles or engines under § 85.1509 in the future and be placed on a list of certificate holders ineligible to import vehicles or engines under the provisions of § 85.1509.

(2) Grounds for the actions described in paragraph (e)(1) shall include, but not be limited to, the following:

(i) Action or inaction by the certificate holder or the laboratory performing the FTP on behalf of the certificate holder which results in fraudulent, deceitful or grossly inaccurate representation of any fact or condition which affects a vehicle's or engine's eligibility for admission to the U.S. under this subpart;

(ii) Failure of a significant number of vehicles or engines imported to comply with Federal emission requirements upon EPA inspection or retest; or

(iii) Failure by a certificate holder to comply with requirements of this subpart.

(3) The following procedures govern any decision to suspend, revoke, or refuse to issue certificates under this subpart:

(i) When grounds appear to exist for the actions described in paragraph (e)(1), the Administrator shall notify the certificate holder in writing of any intended suspension or revocation of a certificate, proposed ineligibility to apply for new certificates, or intended suspension of eligibility to conduct modification/testing under § 85.1509, and the grounds for such action.

(ii) Except as provided by paragraph (e)(3)(iv) of this section, the certificate holder must take the following actions before the Administrator will consider withdrawing notice of intent to suspend or revoke the certificate holder's certificate or the certificate holder's eligibility to perform modification/testing under § 85.1509:

(A) Submit a written report to the Administrator which identifies the reason for the noncompliance of the vehicle or engines, describes the proposed remedy, including a description of any proposed quality control and/or quality assurance measures to be taken by the certificate holder to prevent the future occurrence of the problem, and states the date on which the remedies will be implemented; or

(B) Demonstrate that the vehicles or engines do in fact comply with applicable regulations in this chapter by retesting such vehicles or engines in accordance with the FTP.

(iii) A certificate holder may request within 15 calendar days of the Administrator's notice of intent to suspend or revoke a certificate holder's eligibility to perform modification/testing or certificate that the Administrator grant such certificate holder a hearing.

(A) As to whether the tests have been properly conducted.

(B) As to any substantial factual issue raised by the Administrator's proposed action.

(iv) If, after the Administrator notifies a certificate holder of his/her intent to suspend or revoke a certificate holder's certificate of conformity or its eligibility to perform modification/testing under § 85.1509 and prior to any final suspension or revocation, the certificate holder demonstrates to the Administrator's satisfaction that the decision to initiate suspension or revocation of the certificate or eligibility to perform modification/testing under § 85.1509 was based on erroneous information, the Administrator will withdraw the notice of intent.

(4) Hearings on suspensions and revocations of certificates of conformity or of eligibility to perform modification/testing under § 85.1509 shall be held in accordance with the following:

(i) Applicability. The procedures prescribed by this section shall apply whenever a certificate holder requests a hearing pursuant to subsection (e)(3)(iii).

(ii) Hearing under paragraph (e)(3)(iii) of this section shall be held in accordance with the procedures outlined in § 88.613, where applicable, provided that where § 86.612 is referred to in § 86.613: Section 86.612(a) is replaced by § 85.1513(d)(2); and § 86.612(i) is replaced by § 85.1513(d)(3)(iii).

(5) When a hearing is requested under this paragraph and it clearly appears from the data or other information contained in the request for a hearing, or submitted at the hearing, that there is no genuine and substantial question of fact with respect to the issue of whether the certificate holder failed to comply with this subpart, the Administrator will enter an order denying the request for a hearing, or terminating the hearing, and suspending or revoking the certificate of conformity or the certificate holder's eligibility to perform modification/testing under § 85.1509.

(6) In lieu of requesting a hearing under paragraph (e)(3)(iii) of this section, a certificate holder may respond in writing to EPA's charges in the notice of intent to suspend or revoke. Such a written response must be received by EPA within 30 days of the date of EPA's notice of intent. No final decision to suspend or revoke will be made before that time.

§ 85.1514 Treatment of confidential information.

(a) Any importer may assert that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment as provided by 40 CFR Part 2, Subpart B.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this subpart is confidential, an importer must indicate clearly the items of information claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of its submittal from which all confidential information has been deleted. If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted the confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Administrator only to the extent and by means of the procedures set forth in Part 2, Subpart B, of this chapter.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter.

§ 85.1515 Effective dates.

The provisions of this subpart are effective on July 1, 1988.

PART 600—[AMENDED]

2. The authority citation for Part 600 continues to read as follows:

Authority: 15 U.S.C. 2001, 2003, 2005, 2006.

3. 40 CFR 600.007–80 is amended by adding a new paragraph (b)(7) to read as follows:

§ 600.007–80 Vehicle acceptability

* * * * *

(b) * * *

(7) For vehicles imported under § 85.1509 or § 85.1511 (b)(2), (b)(4), (c)(2), (c)(4), or (e)(2) (when applicable) only the following requirements must be met:

(i) For vehicles imported under § 85.1509, a highway fuel economy value must be generated contemporaneously with the emission test used for purposes of demonstrating compliance with § 85.1509. No modifications or adjustments should be made to the vehicles between the highway fuel economy and the FTP emissions test.

(ii) For vehicles imported under § 85.1509 or § 85.1511(b)(2), (b)(4), (c)(2), (c)(4) or (e)(2) (when applicable) with over 10,000 miles, the equation in § 600.006–86 (g)(1) shall be used as though only 10,000 miles had been accumulated;

(iii) Any required fuel economy testing must take place after any safety modifications are completed for each vehicle as required by regulations of the Department of Transportation.

(iv) Every vehicle imported under § 85.1509 or § 85.1511(b)(2), (b)(4), (c)(2), (c)(4) or (e)(2) (when applicable) shall be considered a separate type for the purposes of calculating a fuel economy label for a manufacturer's average fuel economy.

4. 40 CFR 600.007–80 is amended by revising paragraph (f) to read as follows:

§ 600.007–80 Vehicle acceptability.

* * * * *

(f) All vehicles used to generate fuel economy data must be covered by a certificate of conformity under Part 86 before:

(1) The data may be used in the calculation of any approved general or specific label value, or

(2) The data will be used in any calculations under Subpart F, except that vehicles imported under § 85.1509 and § 85.1511 need not be covered by a certificate of conformity.

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Part III

Department of Justice

Office of Juvenile Justice and
Delinquency Prevention

Juvenile Justice Statistics and Systems
Development Program; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Juvenile Justice Statistics and Systems Development Program

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of issuance of a solicitation for applications to establish a Juvenile Justice Statistics and Systems Development Program.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to sections 241 and 224(b)(1) of the Juvenile Justice and Delinquency Prevention Act, as amended, is sponsoring a program to establish a Juvenile Justice Statistics and Systems Development Program. The purpose of this program will be to develop and implement strategies for improving:

- The quality and utility of national and subnational (state and local) statistics on juvenile justice; and,
- Decision making and management information systems within the juvenile justice system.

This effort will assist OJJDP in implementing the recommendations from the Assessment of National Juvenile Justice Statistics. This requires formulating and implementing a program of national and subnational juvenile justice statistics that promotes the development and effective use of statistics for systemwide and individual agency planning and management; policy and program development; and, research and evaluation at the Federal, state and local level. The scope of the program related to improving national and subnational statistics includes Federally-sponsored national surveys of individuals regarding their experience as victims and/or offenders as well as Federally-sponsored administrative surveys that involve the collection of data from local reporting units regarding some aspect of the justice system response to these juveniles.

In addition to performing the tasks related to planning and improving national and subnational statistical networks and products, the recipient will be responsible for:

- Assessing operational juvenile justice agencies' decision making and related management information systems;
- Developing prototypical decision making and related management information systems, and promoting the effective use of the information generated by the systems for planning,

management and resource allocation development;

- Developing training and technical assistance materials to promote the adoption of the prototypical systems to test sites; and,
- Providing intensive training and technical assistance to implement the prototypes in the test sites.

It is expected that these two tracks: National Statistics and Systems Development, will complement each other and will improve the capability of Federal, state and local, public and private juvenile justice agencies to understand the needs of the juvenile population they serve and as a result more effectively manage their resources for delinquents and other juveniles in need of services.

Eligibility

Applications are invited from public agencies and private not-for-profit organizations which can demonstrate the capability to effectively carry out the mission of the Juvenile Justice Statistics and Systems Development Program to enter into a cooperative agreement with OJJDP. The project period will be four years, with incremental budget periods. OJJDP has allocated up to \$1,000,000 for the initial budget period of 24 months. Based on successful completion of the first budget period, several non-competing awards are anticipated. Applicants are encouraged to submit cost-competitive proposals.

DATE: The deadline for receipt of applications is November 9, 1987. For further information contact: Barbara Allen-Hagen, Research and Program Development Division (202/724-5929); or Douglas C. Dodge, Special Emphasis Division (202/724-5914), Office of Juvenile Justice and Delinquency, 633 Indiana Avenue NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION:

Juvenile Justice Statistics and Systems Development Program

- I. Definitions
- II. Introduction and background
- III. Program goals and objectives
- IV. Program strategy
- V. Dollar amount and duration
- VI. Eligibility requirements
- VII. Application requirements
- VIII. Procedures and criteria for selection
- IX. Submission of application
- X. Civil Rights compliance

I. Definition

The following definitions are offered to clarify terms and concepts frequently used in this solicitation. Because one of the purposes of this program is to help OJJDP further define the parameters of a

national statistical program and a model decision making system(s), these definitions are subject to change.

Juvenile—any person under the age of 18 in the United States (1) who is or may be, for statutorily determined conduct or circumstances (e.g., delinquency noncriminal misbehavior and abuse/neglect), subject to the adjudication and supervision processes of the juvenile court, or (2) who, although not described by criterion (1) above, is under the age of 18 and is either under criminal court jurisdiction or is a victim of a criminal offense.

Juvenile and Criminal Justice System Response—any official action (arrest/taking into custody, filing a petition, detention order, diversion, waiver/transfer, adjudication, disposition, probation order, commitment/placement, release from custody/jurisdiction, etc.) made in response to acts committed by or against a juvenile (delinquency, status offense, or abuse/neglect or criminal victimization) that may come before the juvenile or criminal court for adjudication, disposition or judicial review. These actions may be taken by local and/or state agencies depending on the locus of the authority.

National Juvenile Justices Statistics Program—a series of routinely administered data collection efforts that are designed to produce current, reliable, nationally representative data regarding the extent and nature of juvenile offending and victimization and the juvenile or criminal justice system response.

Subnational Statistics—data routinely gathered on juvenile or criminal justice system response generated or maintained by any local or state agency or organization with the appropriate statutory or delegated authority to perform such a function.

Assessment Recommendation—a series of recommendations contained in a draft document entitled, "The Assessment of National Juvenile Justice Statistics: An Agenda for Action", (hereinafter referred to as "Agenda"), James P. Lynch, April 1987, based on a jointly-sponsored OJJDP/Bureau of Justice Statistics assessment of Federally-sponsored national data collection efforts regarding juveniles as victims and offenders. Copies of this document can be obtained by calling Barbara Allen-Hagen, at 202/724-5929 or Douglas C. Dodge, at (202) 724-5914.

Management Information System (MIS) Prototype—a proposed set (the minimum number) of variables and data elements with standardized definitions for juvenile or criminal justice system

responses that meet local or state agency information needs, as well as national information system requirements for developing national estimates regarding juvenile justice system response to juvenile victims and offenders. Model or prototype management information systems will be developed for each component agency of the juvenile justice system or, where applicable, the criminal justice system.

Decision Making System Prototype

A systematic approach to decision making which delineates the range of juvenile or criminal justice system responses that can be made by local/state agencies regarding the processing of juveniles through each decision point in the juvenile or criminal justice system from initial contact with law enforcement or referral to juvenile or family court or court of similar jurisdiction through disposition and release from jurisdiction.

II. Introduction and background

Recently OJJDP and the Bureau of Justice Statistics (BJS) undertook the first major assessment of the quality and utility of existing national statistics on juveniles as victims and offenders. The overwhelming conclusion of this assessment was that critical information on the extent and nature of juvenile crime and victimization was seriously deficient for both policy and research purposes. In addition, national, state, and local data on important aspects of the justice system response are fragmented, non-comparable, or non-existent. Further, if significant improvements were to be made, the current inadequacies of the existing system would have to be approached systematically. The product of this effort, "The Assessment of National Juvenile Justice Statistics: An Agenda for Action", outlines a comprehensive series of recommendations for improving the quality, utility and accessibility of data for national, state and local uses. Incorporated in the discussion of the recommendations are steps to be taken to achieve a particular information goal. For national and subnational statistics these steps range from conducting secondary analysis of existing data to initiating new data collection efforts.

There is general consensus that there is a need to improve juvenile justice decision making related to planning, policy and program development and management within and across juvenile justice agency lines. Often decisions are not guided by explicit policies or criteria. These decisions are frequently

made in the absence of critical information that is often not available within a single agency or is not shared between agencies. Both of these inadequacies need to be addressed simultaneously for effective management of juvenile justice resources. For example, in order to determine the need for additional detention beds, a jurisdiction needs to specify the policies/screening criteria used to make detention decisions; to identify where the decisions are made; and, to develop information on the number and types of youth detained as well as their lengths of stay. Without this type of information, population projections that may form the basis for expenditure of funds will be flawed. There are a host of basic policy and information needs, such as those identified in the above example, that are common to almost any juvenile justice "system" that should be identified, and, around which a model decision making system(s) should be developed. Therefore, it is necessary to assess decision making policies and procedures, delineating agency-level activities at each critical decision point in juvenile justice system. In addition, the assessment should document agencies' use of currently collected data; and from this assessment develop a prototypical decision making and related complementary management information system(s). The local management information system(s) must be designed to contribute to the development of a national base of information on critical aspects of the juvenile justice system response to juvenile crime and victimization.

The Juvenile Statistics and Systems Development Program is an integral part of the strategy to implement the recommendations to improve national and subnational statistics, as well as to improve the decision making capability of local juvenile justice agencies. The program is being established to guide choices regarding the future direction of national statistics and methods for assisting the development of local decision making and information systems data collection efforts. Finally it will focus on integrating these two activities to ensure that local and state information systems can become the building blocks for a national juvenile justice statistics program. This is the beginning of a long term commitment which is needed to document and monitor trends in the level and nature of delinquency and victimization, as well as the juvenile justice system's response to these problems. One of the major functions of this program will be the

dissemination of existing information for policy-making purposes as well as to provide greater access of existing data sets to the research community for policy analysis and program evaluation.

III. Program goals and objectives

There are two major goals of this program:

- To create a national juvenile justice statistics program that is responsive to Federal, state and local information needs; and
- To improve systemwide decision making and management information capabilities of juvenile justice system and component agencies.

A national juvenile justice statistics program must be developed that produces useful and reliable national and subnational statistics on juveniles that inform the public about the extent and nature of juvenile delinquency and victimization, their correlates and consequences, as well as juvenile justice system response to these social problems. This program must yield data on these phenomenon that are useful for policy and program development and evaluation at the Federal, state and local level.

A concurrent goal of this program is to improve the capability of the juvenile justice system and its component agencies to respond to the problems of juvenile crime and victimization, through the development and testing of prototypical decision making and management information systems. The program is designed to promote the understanding and the use of prototypical system wide juvenile justice decision-making policies and practices to assess, monitor and improve the administration of juvenile justice. In addition to supporting systems improvement, the program also is intended to contribute to building a national statistical system which promotes the effective use of statistics for planning, resource allocation and other juvenile justice system management decisions at the Federal, state and local level.

In order to achieve these goals, a comprehensive program to improve the quality and utility of national and subnational statistics, and decision making must be developed and implemented. The Assessment of National Juvenile Justice Statistics has outlined a broad agenda for making needed improvements in national and subnational statistics. The establishment of the Juvenile Justice Statistics and Systems Development Program is intended to build upon this work. The recipient will be responsible

for providing the necessary technical and substantive resources to achieve the following objectives during the first 24-month phase of the program's operation:

National statistics objectives

- Assist in formulating long-term and short-term plans for systematically improving juvenile statistics, including prioritizing information needs; choosing which Assessment Recommendations to pursue; and carrying out the necessary steps to implement these plans;
- Assess the potential of existing subnational statistical systems/networks for contributing data to a national statistical reporting system; and,
- Develop a strategy for the analysis, publication and dissemination of existing national and subnational data on juveniles and the justice system;

Systems development objectives

- Assess operational juvenile justice agencies' decision making related management information activities, policies, and procedures;
- Develop prototypical decision making systems and complementary management information systems as well as model output reports pertaining to planning, management, resource development and allocation, an intra and inter agency coordination;
- Develop training and technical assistance materials to transfer prototypes;
- Develop and implement a strategy for testing the effectiveness of the prototypical decision making and management information systems; and,
- Determine the feasibility of the building a network of jurisdictions to contribute to a national juvenile justice statistical reporting program on juvenile justice system response.

IV. Program strategy

OJJDP planning and program development activities are guided by a framework which specifies four sequential phases: research, development, demonstration and dissemination. The framework guides the decision making process regarding the funding of future phases of the program.

This program falls within the research and development phases. The purpose of the research phase is to develop new knowledge and to monitor trends to inform and assess policy and program development. The national/subnational statistics objective fall under this phase. The purpose of the development phase is to develop prototypes and, to determine their effectiveness through a testing process, and to disseminate the

prototypes to the field. The systems development objectives fall within this phase.

This initiative is designed to evolve along two tracks. The first involves developing strategies to improve the quality and utility of federally-sponsored national data collection efforts, including surveys of individuals regarding their experience as victims and/or offenders as well as administrative surveys that involve the collection data from local reporting units regarding some aspect of the justice system response. The second track involves efforts to improve the quality and utility of state and local decision making and related management information systems. While each track has its defined objectives and expected results, the two tracks are clearly interdependent. Therefore, although the activities of each track require somewhat different skills, strategies and schedules, it is critical that the grantee structure an approach to ensure that the development of the two tracks is closely coordinated and that the results of each track complement the work of the other.

Each track will involve several basic stages of development. As will be described below, it is anticipated that stages one through three of the national statistics track and stages one through three of the systems development track will be completed during the first 24-month project period. Each stage of the process detailed below is designed to result in complete and publishable products, and a dissemination strategy to inform the field of the development of the program and the results and products of each stage.

A project advisory committee, consisting of knowledgeable survey methodologists; statisticians; data users and suppliers; practitioners and experts in juvenile justice policy, systems and resource management will be appointed to provide guidance to the program in carrying out its functions, reviewing plans, and products. Two subcommittees, supplemented by technical consultants as necessary, should be formed to advise the development of each track.

National Statistics Track

Stage I—Assessment

"During this stage the recipient will review the recommendations of the 'Agenda', and other relevant literature, and assist OJJDP in selecting those recommendations that should be adopted and in what priority order they should be pursued. It is anticipated that this will require an intensive process involving the participation of OJJDP, the

recipient, and the project advisory board. This stage will also involve preliminary identification of national data system requirements that will inform the development of local management information system prototypes under the Systems Development Track.

To assist in the prioritization and selection of recommendations to be pursued, the recipient will provide the necessary background information on the resources, technology and agency cooperation that would be required to implement the recommendations. Based on the approval by OJJDP of the first set of recommendations to be adopted, the recipient will identify the steps involved in implementing each selected recommendation. Finally, the recipient will develop a detailed, comprehensive plan for the implementation of the selected recommendations focused on improvement of national and subnational statistics, and on the analysis and dissemination of existing information.

Activities

The major activities of this stage are:

- Establishment and convening of the project advisory committee board;
- Development of an assessment plan specifying the approach for each step of the assessment stage;
- Identification of the national data system information requirements that should be incorporated into the development of the prototype local management information systems under the System Development Track.
- Review of the National Juvenile Justice Statistics Assessment and Prioritization of Recommendations;
- Specifications of the steps required to implement selected recommendations; and,
- Development of a detailed plan to implement the selected national/subnational statistical programs. (It should be recognized that each of the data collection activities which are selected for implementation will likely proceed at a different pace through the next three stages of development, depending on the specific nature of the activity.)

Products

The products to be completed during this stage are:

1. Assessment Plan.
2. Recommendation for prioritization of Statistics Assessment recommendations.
3. Report specifying the resources, technology, agency cooperation, and the

implementation activities for each of the priority recommendations.

4. Recommendations for assessing quality and utility of subnational statistical systems/networks for contributing to national information on juvenile justice system response.

5. Plan for implementing selected national/subnational statistical programs.

6. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Stage II—Analysis and dissemination

Upon successful completion of stage one, the recipient will conduct those activities in the plan developed during the assessment stage which involve analysis and dissemination of existing national and/or subnational data sets to inform policy and program development. This will involve the development of a dissemination strategy to: (1) Make available to the field statistical information from existing national and subnational data sets; and (2) to examine the utility of existing data sets for addressing selected policy issues.

The first task will be accomplished by preparing a national report on juvenile offending and victimization, which will be updated bi-annually by the program.

The second task will involve the preparation of papers based on analysis of one or more data sets to address particular policy or program issues in juvenile justice. The topics will be selected by OJJDP in consultation with the recipient and the program advisory committee. The analysis will also include an examination of the utility of a particular data set for meeting information needs in the field.

Activities

The major activities of this stage are:

- Development of a plan for the analysis and dissemination activities;
- Selection of topics for issue papers;
- Preparation of a draft and final national report on results of juvenile offending and victimization;
- Preparation of issue papers based on analysis of existing data sets; and,
- Development and implementation of a dissemination strategy.

Products

The products to be completed during this stage are:

- (1) Plan for conducting the analysis and dissemination activities;
- (2) Draft and final national report on juvenile offending and victimization;
- (3) A minimum of three papers on selected policy or program issues;

Stage III—Survey design and feasibility studies

During this stage, the recipient will initiate the design of new data collection activities included in the plan developed during the assessment stage. These may consist of revisions to existing national data collection efforts, or the design and implementation of new efforts. This stage will involve three steps as appropriate. For those data collection efforts that are to be revised, the first step consists of secondary analysis of the relevant national data set. For new data collection initiatives, the first step will consist of evaluating existing data collection efforts and conducting secondary analyses of these, if available, to determine the potential for collecting the desired information through an existing survey mechanism. The second step will be the conduct of *feasibility studies* to develop more definitive information on the viability of particular approaches to data collection for addressing a particular issue.

Third, based upon the results of the secondary analyses and/or feasibility studies, the recipient will prepare a recommendation regarding the viability of the proposed new or revised data collection activity. As appropriate, the recommendation should include a proposed survey design, specifying the substantive, strategic costs and methodological requirements, and projected costs for full implementation of the data collection activity. It must provide an in-depth statement of the rationale for each effort; an articulation of the specific policy, programmatic, and/or research purposes that the particular effort is designed to address; and a justification for the proposed design based on the experience of the secondary analyses phase and/or the feasibility studies.

Should OJJDP choose to implement a new national data collection effort, most likely it will be supported through an interagency agreement, or a competitively awarded cooperative agreement or contract. For the latter options, it is anticipated that the recipient will be excluded from competition. The recipient will however, provide the necessary consultation to assure that the survey(s) is implemented in a manner consistent with the proposed design and the direction of the project advisory board.

Activities

The major activities to be conducted during this stage are:

- Development of a plan for the design of new data collection efforts; including the steps for each effort;

- Conduct of secondary analyses of existing relevant data sets;

- Conduct of feasibility studies;

- Coordination of the design of new national activities with the local systems;

- Preparation of draft and final recommendations for each new data collection effort;

- Development and implementation of a dissemination strategy;

Products

The products to be completed during this stage are:

1. Plan for the design of new data collection efforts;
2. Draft and final recommendations for new data collection efforts; and,
3. Dissemination strategy to inform the field of the development of the program and products of this stage.

Stage IV—Implementation of new data collection efforts

During this stage the recipient will provide methodological advice and oversight of newly initiated data collection efforts. Program staff and consultants who have been involved in the design stage will serve in a consultant capacity to organizations selected to conduct these efforts. The program's Advisory Committee will also review these efforts as appropriate. Additional ongoing activities under this stage include the refinement of plans, re-analysis of relevant data sets for policy or program development purposes, conduct of additional feasibility or pilot tests, as needed, and the production and dissemination of recurring and ad hoc reports resulting from the program's work.

Activities

The major activities of this stage are:

- Development of a plan for implementation of new data collection efforts;
- Technical Assistance to new data collection activities;
- Advisory Committee review of new data collection activities, and on-going OJJDP data collection projects;
- Preparation of reports based on existing and new data collection activities; and,
- Identification of new priorities.

Products

1. Plan for implementation of new data collection efforts.
2. Reports on the status of new data collection activities.
3. Recommendations for new priority areas.

Systems development track

Stage I—Assessment

The recipient will be responsible for designing and conducting an assessment of selected state and local decision making systems; existing management information systems and the current or potential analytical uses of operational data for juvenile justice system management, policy development, planning and evaluation; and the potential of local data collection activities for contributing to a national data collection program on juvenile justice system response. The assessment must be designed to provide OJJDP with specific recommendations for optimal operation of both decision making and complementary management information systems that will be the basis for the prototype development activities occurring in the next stage as well as the development of a strategy for a national program for collection of data on juvenile justice system response.

During this stage the recipient will conduct a review of the literature on juvenile justice decision making policies, procedures and practices at the system as well as the individual agency level, and on management information systems that gather and analyze data that are designed to support decision making activities. Based on the review, and the guidance from the advisory committee and OJJDP, the recipient will develop criteria to select and conduct onsite assessment of existing state and local agency decision making and management information systems.

The assessment will focus on system design and operation, by examining the decision making and information activities of the individual component agencies as well as activities involved in referring youth from one component of the system to another. It will examine who makes decisions regarding the handling of different types of youthful offenders and nonoffenders, what types of decisions are made, and the subsequent resources expended in responding to those decisions. It will also examine the type of information that is collected by component agencies, who collects it, how it is collected, how it is analyzed and how it is used. This will include a review of the purpose and usefulness of output reports generated for use by juvenile justice agencies. In order to monitor trends and to make critical management decisions on an agency and systemwide basis in the areas of planning, policy formulation, program development, resources allocation, research evaluation and budget development and control. Particular attention will be paid to the

potential contribution of various management information systems to a national data collection system.

Activities

The major activities of this stage are:

- Convening the project advisory committee;
- Development of an assessment plan specifying the approach for each step of the assessment stage;
- Review of the literature;
- Development of the criteria for site assessment activities;
- Implementation of the site assessment;
- Development of preliminary testing design guidelines;
- Development of recommendations for the national reporting program on juvenile justice system response based on assessment of existing management information systems;
- Development of a draft and final assessment report;
- Development of a dissemination strategy;

Products

The products to be completed during this stage are:

1. Project Advisory Committee Recommendations;
2. Assessment Plan;
3. Literature Review;
4. Criteria for Site Assessment

Activities:

5. Recommendations with regard to Preliminary Guideline for Test Design;
6. Preliminary strategy for developing a national reporting program on juvenile justice system response based on local/site reporting units;
7. Draft and Final Assessment Report; and
8. Dissemination strategy to inform the field of the development of the program and products and results of this stage.

Stage II—Prototype Development

Upon successful completion of stage one, the recipient will develop one of more prototypes of a juvenile justice decision making and complementary management information system for implementation at the state and local level. The prototypes will explain how to operationalize and assess agency policy through the implementation of a well-defined decision making system and a supportive management information system. The prototype information will be detailed in operational manuals which contain detailed specifications for the development, implementation and operation of the prototypical state and local decision making and management

information systems. The prototypes will describe, for each component agency of the juvenile justice system, how to define policy and implement it through the establishment of decision making criteria, practices and procedures for processing juveniles; and the establishment of a management information system that will provide the information specified by the decision criteria, as well as data on the flow of juveniles through the system.

In developing the prototype management information systems, the requirements of a national data system must be addressed. This must include recommendations regarding: the scope of initial program, sampling issues related to implementation, identification of both incentives and necessary assurances regarding the use and disclosure of data in order to ensure participation in the program, and the identification of specific products or reports that the system would be capable of generating for national purposes.

Because of the need to demonstrate the potential utility of both the decision making model and the management information system, the prototypes must include the identification of the practical uses and potential benefits to an agency as well as to the overall juvenile justice system that may adopt the prototype systems. Model output reports that would result from the implementation of the prototypes should be designed. The recipient will prepare examples of such reports and include those for: planning (e.g., development of population or personnel projections); policy formulation (e.g., establishing criteria for use of secure detention, or for setting dispositional/release guidelines); program development (e.g., determining the need for a urinalysis program to monitor probationers, or the need for runaway shelter); budgeting (e.g., setting per diem rates for contract services, determining juvenile justice system annual expenditures by agency); program and policy evaluation (e.g., determining the effectiveness of jail removal policies and alternatives, or the impact of a truancy reduction program on reported daytime burglaries); and research (e.g., documenting trends in the percentage of personal crimes involving juvenile gangs, or the percentage of violent crimes in which kidnapping of a juvenile was a corollary offense). This will involve identifying necessary decision making activities and corresponding data elements, minimum requirements regarding the data collection procedures, for each use.

Activities

The major activities of this stage are:

- Participation of the Advisory Committee;
- Development of a plan for prototype development;
- Development of the decision making and information system prototypes and related materials;
- Development of recommendations regarding the scope, content and approach to developing a national reporting program on juvenile justice system response based on data generated by the management information system prototypes; and,
- Development of a dissemination strategy.

Products

1. Prototype Development Plan.
2. Dissemination Strategy to inform the field of the development of the program, and the products and results of this stage.
3. Draft and Final Prototype Designs and Operation Manuals.
4. Draft and Final Design for the National Reporting Program on Juvenile Justice System Response.

Stage III Training and technical assistance

While a decision to develop training and technical assistance materials and to test the prototype design(s) will be made during or following the completion of the prototype system development stage, the applicant is expected to explain the methods and approaches that would be employed to implement all of the stages. As noted, funds for this stage will be provided in the initial award period. Funds for the testing stage will be provided through non-competitive continuation awards. In order to ensure the applicant's understanding of the entire development effort, however, the initial application must address and explain the implementation and coordination of all four stages of the initiative (i.e., assessment, prototype development, training and technical assistance development, and testing).

Upon successful completion of stage 3 and with the approval of OJJDP, the grantee will transfer the prototype decision making and management information system design(s), including policies and procedures, into a training and technical assistance package. A comprehensive training manual which outlines the major issues that need to be addressed in developing programs for state and local subnational policy level decision makers, and detail program prototypes, must be developed to

encourage and facilitate implementation of prototypes. The training manual should be the focal point of the entire training and technical assistance package. The major audience will be policymakers and practitioners involved in resource allocation and program development at the state and local subnational levels. The manual must be designed for a formal training setting, and for independent use in jurisdictions that do not participate in formal training sessions. Therefore, the manual should include a complete description of the decision making prototype and incorporate related policies and procedures to operationalize the prototypes. The manual should contain instructions and supplementary materials for trainers to facilitate presentation, and ensure understanding and successful adaptation and implementation of the prototypes.

Activities

The major activities of this stage are:

- Preparation of a plan for developing the training and technical assistance package;
- Development of the training and technical assistance materials;
- Recruitment and preparation of the training and technical assistance personnel;
- Testing of the training curriculum manual;
- Participation and review by the advisory committee; and,
- Development and implementation of a dissemination strategy which may include workshops or seminars for national and subnational level decision makers.

Products

The products to be completed during this stage are:

1. Plan for the development of the training and technical assistance package;
2. Identification of training and technical assistance personnel;
3. Draft and final training and technical assistance package-including the training curriculum manual and information materials; and,
4. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Stage IV—Prototype implementation and testing

This stage of the program consists of a test, in selected jurisdictions, of the prototypes developed in Stage II. The recipient will be required to assist the OJJDP in developing a solicitation to make awards to test sites. It will also be

required to provide intensive training and technical assistance to help test sites implement the decision making and management information system prototypes on an experimental basis. Finally, the grantee will be expected to work cooperatively with an independent evaluator to ensure the integrity of the data collection and feedback activities.

Activities

The major activities of this stage are:

- Develop recommendations for a program announcement to select test sites;
- Assist OJJDP in review and selection of test sites;
- Provide intensive training and technical assistance to test sites regarding the implementation of prototypes on an experimental basis;
- Develop procedures for working cooperatively with the program evaluator, particularly in the areas of data collection and feedback; and
- Develop and implement a dissemination strategy.

Products

The major products for this stage are:

1. Recommendations for the program announcement for test sites;
2. Plan for providing training and technical assistance to test sites and,
3. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

V. Dollar amount and duration

A cooperative agreement will be awarded to the successful applicant. The project period is four (4) years. OJJDP has allocated up to \$1,000,000 for the first budget period of 24 months: Up to \$350,000 allocated for the National Statistics Track, and up to \$650,000 is allocated for the System Development Track.

Funds for noncompeting continuation awards within the approved four-year project period may be withheld for justifiable reasons. They include:

- (1) There is no continued need for program activity;
- (2) The grantee is delinquent in submitting required reports;
- (3) Adequate funds of the grantor agency are not available to support the project;
- (4) The grantee has failed to show satisfactory progress in achieving the objectives of the project or otherwise failed to meet the terms and conditions of award;
- (5) A grantee's management practices have failed to provide adequate stewardship of grantor agency's funds;

(6) Outstanding audit exceptions have not been cleared; and

(7) Any other reason which indicates that continued funding would not be in the best interest of the Federal government.

VI. Eligibility Requirements

Public agencies and private not-for-profit organizations are eligible to apply to conduct both the National Statistics Track and System Development Track. Private for-profit organizations are eligible to conduct only the National Statistics Track, due to legislative restrictions for different types of discretionary funds. Applicant organizations may choose to submit proposals with other eligible organizations, as long as one organization is designated in the application as the applicant and any co-applicants are designated as such. In order to be eligible for consideration the applicant, together with any co-applicant, must have experience in each of the following areas specified in A-C below.

A. Design, development, or implementation of national or subnational (multi-jurisdictional) data collection efforts regarding crime and delinquency or the criminal or juvenile justice system; or, the maintenance of a data archive for the promotion of secondary analysis of data for research, policy or program evaluation;

B. Applied research or policy analysis regarding crime, delinquency, or the criminal/juvenile justice system; and,

C. The development of decision making and management information systems, and the development and delivery of training and technical assistance to state and local criminal or juvenile justice agencies.

VII. Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF 424), including a Program Narrative (Part IV), a Detailed Budget, and a Budget Narrative. In response to the Part IV requirements of the SF 424 (Program Narrative), all applicants must provide concise responses to the information required in this Section of the solicitation. The Program Narrative Section of the application should not exceed 100 double-spaced pages in length, excluding the budget, the budget narrative and appendices.

In submitting applications which contain more than one applicant organization, the relationships among the parties must be set forth in the application. As a general rule, organizations which describe their

working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicants. Under this arrangement, each organization must agree to be jointly responsible for all project funds and services. Each co-applicant must sign the SF-424 and indicate their acceptance of the conditions of joint responsibility with the other co-applicants.

Applications which include sole source contracts for the provision of specific goods or services must include a sole source justification for any procurement in excess of \$10,000.

A. Organizational Capability

Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of eligibility criteria established in Section VII of this solicitation.

1. Organizational Experience

Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified in Section VI above. Applicants must demonstrate how their organizational experience and current capabilities will enable them to achieve the goals and objectives of this initiative. Applicants should highlight significant organizational accomplishments which demonstrate their responsiveness to the needs of the field, reliability in terms of producing quality products in a timely fashion, and having the ability to work effectively with operational justice agencies.

2. Project Staffing

Applicants must provide a list of key personnel responsible for managing and implementing the program. Applicants must present detailed position descriptions, qualifications and selection criteria for each position, whether they are salaried or staff, hired by contractor(s) of the grantee. In addition, if key functions or services are to be provided by consultants on a contractual basis, the applicant must indicate the individuals to be hired for specific tasks, or the specific skills that would be needed to perform these tasks and the means of acquiring them. Resumes must be provided and may be submitted as appendices to the application. Applicants must demonstrate that the proposed staff

complement have the requisite background and experience to accomplish the major responsibilities outlined in Section V above. Applicants should highlight significant accomplishments of the proposed staff in relation to their respective roles in the project. In addition, the percentage of each staff person's time committed to the project must be clearly indicated in the budget narrative.

3. Financial Capability

In addition to the assurances provided in Part V, Assurances (SF-424), applicants must also demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this agreement are disbursed and accounted for properly. Applicants who have not previously received federal funds will be asked to submit a copy of the Office of Justice Assistance, Research and Statistics (OJARS) Accounting System and Financial Capability Questionnaire (OJARS Form 7120/1). Other applicants may be requested to submit this form. All questions are to be answered regardless of instructions (Section C.I.B. note). The CPA certification is required only of those applicants who have not previously received Federal funding.

B. Program Strategy and Goals

Applicants must demonstrate their understanding of the goals and objectives of this program by their approach to the program strategy. Specifically applicants must address the following items:

1. Outline the criteria for selecting and procedures for establishing the project advisory board, and describe their role in the Program's operations.

2. Describe the approach to developing the long-term and short-term objectives for improving juvenile justice statistics, including the prioritization of information needs and choices of Agenda recommendations to pursue.

3. Discuss the process for recommending which secondary analyses should be undertaken, their specific purposes, and proposed products and the resources that will be used for conducting them.

4. Outline the basic components of a national report on juvenile offending, victimization and juvenile justice system response; and propose a strategy for dissemination of products related to both the national and subnational data.

5. Discuss the process for recommending which new data collection efforts should be undertaken, the choice of an appropriate design and

methodology and the need for preliminary feasibility or pilot testing. Applicants should also describe how resources will be allocated for carrying out the design work. For purposes of illustration, applicants are requested to apply their proposed process to the design of a hypothetical survey of institutionalized juvenile offenders.

6. Indicate the critical factors that must be considered in developing a design for the implementation of the assessment of national and subnational data collection, and prototypical decision making and management information systems. Also, discuss the potential impediments to and opportunities for establishing a national juvenile justice statistical reporting series on justice system response to juveniles. Indicate how the decision making and local information system prototypes will be coordinated with the design of national statistical systems.

7. Outline the process and criteria for selecting sites for the assessment of decision making and management information systems. Include a preliminary estimate of the number and types of jurisdictions that should be included in the assessment of juvenile justice agencies. Provide a brief discussion of how the assessment would be conducted and what information would be collected.

8. Discuss how the results of the assessment will be utilized to develop prototypes for the decision making and management information systems that improve state/local decision making capabilities and contribute to building a national information system.

9. Describe the basic components of the policies and procedures manual for operationalizing the decision making and management information system prototypes, and the process to be used for their development and finalization. Also, discuss how the efforts of the preceding stages will contribute to the development of a strategy for implementing and testing the prototypes.

10. Discuss the basic approach to disseminating information regarding the decision making and management information system, including potential audiences, primary means of dissemination of products and to communicating with the field regarding the development and testing of the prototypes.

C. Program Implementation Plan

Applicants shall describe how they will allocate the available resources to implement the program.

1. Applicants must develop an implementation plan which addresses the major responsibilities of the grantee

described in Section IV. of the solicitation. The plan must include:

a. An annotated organizational chart depicting the roles and describing the responsibilities of key organizational/functional components related to the National Statistics and Systems Development Tracks and their respective phases.

b. The implementation plan must clearly indicate how staff and other resources (such as consultants, project advisory board) will be utilized for each of the major activities.

c. A concise discussion of the coordination and administration issues related to the program strategy and how the grantee's organizational structure and management strategy would address these issues.

2. Applicants must develop a detailed time-task plan for the first 24 month budget period, clearly identifying major milestones related to each phase. This must include designation of organizational and staff responsibility, and a schedule for the completion of the tasks and products identified in Section IV.

D. Program Budget

Applicants shall provide an 24-month budget with a detailed justification for all costs by object class category as specified in the SF 424. Costs must be reasonable and the bases for these costs must be well documented in the budget narrative. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets and budget narratives for each organization's expenses.

The applicant must also budget for the costs of convening at least four project advisory board meetings during the first budget period.

VIII. Procedures and Criteria for Selection

Applications will be rated based on the extent to which they meet the following weighted criteria. All applications received will be reviewed in terms of their responsiveness to the application requirements set forth in Section VIII. Selection criteria and weights have been developed to guide the applicants in the development of their proposals and the peer reviewers in their evaluation of: the applicant's organizational capability to meet the goals of the project; the quality of the staff and other resources; the soundness, thoroughness and creativity of the applicant's proposed approach to program strategy and implementation issues; the utility of potential products; and the appropriateness and reasonableness of costs in relation to

the proposed activities and products. Applications will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CRF Part 34, Subpart B, published August 2, 1985, at 50 Federal Register, 31366.

A. Organizational Capability (15 Points)

1. The extent and quality of organizational experience and current capability related to: the design, development, or maintenance of national juvenile/criminal justice data; applied research and policy analysis; and program development, training or technical assistance in juvenile or criminal justice, as outlined in Section VI A-C. (10 points)

2. The presence and extent of adequate fiscal controls and accounting procedures to ensure that the applicant can effectively implement a project of this size and scope, and to ensure the proper disbursement and accounting of Federal funds. (5 points)

B. Project Staffing (20 Points)

1. The breadth and depth of relevant experience of staff identified to manage and implement the program, including staff to be hired through contracts and/or as consultants. (15 points)

2. The clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specifically designated functions. (5 points)

C. Program Goals and Strategy (35 Points)

The applicant's understanding of the program goals, objectives and strategy will be evaluated in terms of the soundness, thoroughness and creativity of their responses to the ten requirements outlined in Section VII. B. Specifically, attention will be paid to: the clarity, feasibility and appropriateness of the responses to each requirement; the understanding of the interdependence of the National Statistics and Systems Developmental Tracks; attention to definitional and measurement issues; the potential utility of products for policy and program development; and, the responsiveness of the proposed dissemination plan to the needs of the field.

D. Implementation Plan (15 Points)

The appropriateness of allocation of resources to accomplish the goals and objectives of the program within the 24 month budget period. Particular attention will be paid to the clarity and reasonableness of the time-task plan which identifies organizational and

individuals' roles and responsibilities for the completion of significant tasks and development of products.

E. Budget (15 Points)

Applicants must include a 24 month-budget with a detailed narrative justifying the costs as specified in Section VII. D. Applications will be rated based on the cost-competitiveness, completeness, reasonableness and appropriateness of the budget in relation to the task to be accomplished.

Applications will be evaluated by a peer review panel. The application which receives the highest total score on the above criteria will be recommendation for funding to the Administrator, OJJDP, provided that required changes in the application can be successfully negotiated. The final decision will be made by the OJJDP Administrator.

IX. Submission of Applications

All applicants responding to the solicitation should be aware of the following requirements for submission:

1. Organizations which plan to respond to this announcement are requested to submit written notification of their intent to apply to OJJDP by *October 15, 1987*. Such notification should specify: the name of the should specify: applicant organization, mailing address, telephone number, and primary contact person. In the event that organizations intend to apply as co-applicants, each of the co-applicants are to provide the above information. *The submission of this notification is optional.* It is requested to assist OJJDP

in estimating the workload associated with the review of applications and for notifying potential applicants of any supplemental information related to the preparation of their applications.

2. Applicants must submit the original signed application and four copies to OJJDP. The necessary forms for applications (Standard Form 424) will be provided upon request. Applications must be received by mail or hand delivered to the OJJDP by 5:00 p.m. EST on *November 16, 1987*. Those applications sent by mail should be addressed to Research and Development Program: Juvenile Justice Statistics Resource and Development Program, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, 633 Indiana Avenue NW., Washington, D.C. 20531. Hand delivered applications must be taken to the OJJDP, Room 724, 633 Indiana Avenue NW., Washington, DC, between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.

X. Civil Rights Compliance

A. All recipients of OJJDP assistance including any contractors, must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended; Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR Part 42, Subpart C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extend financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any award.

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

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Test Report Federal Register

Friday
September 25, 1987

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and
Plants; Pawnee Montane Skipper
(*Hesperia leonardus montana*); final rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine Pawnee Montane Skipper (*Hesperia leonardus montana*) To Be Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a butterfly, the Pawnee montane skipper (*Hesperia leonardus montana*), to be a threatened species under the authority of the Endangered Species Act of 1973, as amended. Critical habitat is not being designated. This butterfly is restricted to the South Platte River drainage in the Front Range of central Colorado. Its habitat has been impacted by housing and other development activities, construction of roads and an existing dam and reservoir. The proposed Two Forks Reservoir project will eliminate some of this species' range and some individuals of the species. This determination that *Hesperia leonardus montana* is threatened implements the protection provided by the Endangered Species Act of 1973, as amended.

EFFECTIVE DATE: The effective date of this rule is October 26, 1987.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Regional Office at 134 Union Boulevard, fourth floor, Lakewood, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Dr. James L. Miller, Regional Listing Coordinator, Fish and Wildlife Enhancement, Endangered Species Division, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 or telephone 303/236-7398 or FTS 776-7398.

SUPPLEMENTARY INFORMATION:**Background**

The Pawnee montane skipper, a member of the Hesperidae butterfly family, was first described in 1911 as *Pamphila (Hesperia) pawnee montana* (Skinner 1911). Scott and Stanford (1982) combined two species (*Hesperia pawnee* and *Hesperia leonardus*), retaining the older specific name *leonardus*, and treated the Pawnee montane skipper as *Hesperia leonardus montana*. This subspecies occurs only on the Pikes Peak Granite Formation in the South Platte River drainage system in Colorado. There are two other related subspecies: *Hesperia leonardus*

leonardus occurring in the eastern U.S. and Canada, and *Hesperia leonardus pawnee* occurring in the Northern Great Plains. This latter subspecies is not known from the Pikes Peak formation, and its range does not overlap with *Hesperia leonardus montana*. The presence of ventral hind wing spots and its darker color differentiate *Hesperia leonardus montana* from *Hesperia leonardus pawnee* (Scott and Stanford 1982).

An adult Pawnee montane skipper is a small brownish-yellow butterfly, with a wingspan slightly over 1 inch. Small, fulvous (dull brownish-yellow), usually distinct spots occur near the outer margins of the upper surface of the wings, while 1 to 4 distinct brownish to off-white spots occur on the lower (ventral) surface of the wings. The ventral spots are larger on the hind wings and are generally whiter in the female butterflies.

The Pawnee montane skipper is found only in four Colorado counties (Teller, Park, Jefferson, and Douglas) within the South Platte River drainage system along the Front Range of central Colorado. The known range of this skipper has always been very restricted. The range (not all occupied) is roughly 23 miles long and 5 miles wide (Keenan et al. 1986). The portion of the range that appears to be suitable habitat covers about 38 square miles (Environmental Research and Technology (ERT) Company 1986). Suitable habitat occurs in bands along the North and South Forks of the South Platte River and extends a short distance along the South Platte River below the confluence of the two forks. The present habitat configuration allows for an interchange of individuals throughout the habitat. The area occupied by the skipper is managed and/or owned by the U.S. Forest Service (Pike National Forest), U.S. Bureau of Land Management, Denver Water Department, the County of Jefferson, and numerous private individuals.

The skipper's habitat is in a mountainous area characterized by canyons with steep slopes and narrow river valleys. The topography is very steep near the confluence of the North and South Forks of the South Platte River, but is less steep upriver. The soil layer is very unstable and susceptible to landslides (Keenan et al. 1986).

Skippers occur in dry, open, ponderosa pine (*Pinus ponderosa*) woodlands on outcrops of Pikes Peak granite where soils are thin, unstable, and susceptible to water erosion. Woodland slopes inhabited by skippers are moderately steep with a south, west or east aspect. The understory in the

pine woodlands is very sparse, with generally less than 30 percent ground cover. Blue grama grass (*Bouteloua gracilis*), the larval food plant, and the prairie gayfeather (*Liatris punctata*), the primary nectar plant, are two necessary components of the ground cover strata. Small clumps of blue grama occur throughout the hot, open slopes inhabited by skippers, but this grass species actually covers a very small part of the surface area (less than 5 percent). Prairie gayfeather occurs in small patches throughout the ponderosa pine woodlands. Skippers are very uncommon in pine woodlands with a tall shrub understory (Keenan et al. 1986) or where young conifers dominate the understory (ERT Company 1986). Even though skippers inhabit dry ponderosa woodlands, they have usually been collected within 1 mile of a stream (Scott 1986).

Pawnee montane skippers emerge as adult butterflies as early as late July, with the males emerging before the females by about a week to ten days. Adults spend most of their short existence feeding and mating. Adult females deposit eggs singly directly on leaves of blue grama grass, which is the only known larval food plant (Scott and Stanford 1982, McGuire 1982, Opler 1986). The species overwinters as larvae, and little is known of the larval and pupal stages. Pupation is generally short (13-23 days) in most butterfly species. The species completes its life cycle (egg to larva to pupa to adult butterfly to egg) annually (Keenan et al. 1986). ERT Company (1986) suggested that adults probably fly until a major killing frost occurs. They also indicated that the phenology of prairie gayfeather, the primary nectar plant, and the pawnee montane skipper are highly synchronous. During 1986, the gayfeather plant began blooming in late July, which coincided with the first observation of adult pawnee montane skippers. The prairie gayfeather was still being used as the preferred nectar source when the last pawnee montane skipper observations were made on September 17.

Although the prairie gayfeather is the most important nectar source for the species, other plants have also been noted as nectar sources for the butterfly. Of the other plants, the musk thistle (*Carduus nutans*) is especially important, particularly along river bottom edges and up some ravines. Female skippers have been seen in large numbers on musk thistle along the South Platte River canyon bottom (Opler 1986). The prairie gayfeather seems to grow in areas subject to disturbance such as

logging or fire, but it appears that the butterfly does not colonize such areas for at least several years following the disturbance. Recently burned or logged areas surveyed in 1986 had low numbers of Pawnee montane skippers (Opler 1986).

The community preferred by the skipper is evidently the northern-most extension of the ponderosa pine/grama grass community, which is documented from southern Colorado and northern New Mexico. However, the preferred nectar plant of the skipper, prairie gayfeather, does not occur in similar habitats to the south. The restricted overlap between the northeastern limit of the ponderosa pine/grama grass community and the southwestern limit of the prairie gayfeather might be a primary factor maintaining the species in this limited/specialized area (Getches 1986).

The elevational range of the species is 6,000–7,500 ft. Studies in 1985 showed that the ratio of male to female skippers was much greater at higher elevations than at lower elevations (32 males: 7 females above 7,100 ft. and 34 males: 20 females below 7,100 ft.; Keenan et al. 1986). In 1986 the Denver Water Department contracted for a study that was designed to determine, among other things, the difference in relative abundance of skippers and prairie gayfeather plants above and below the intended water line (6,575 ft.) of the proposed Two Forks Reservoir. ERT Company (1986) found that the abundance of the gayfeather plant was significantly less above than below the intended waterline, and that adult skipper occurrence and abundance showed a strong association with the presence and abundance of prairie gayfeather. Thus, the densest adult skipper populations occurred below the proposed 6,575 ft. reservoir inundation line, and near the lower boundary of the species' elevational range. The distribution of larvae was not ascertained, so this study could not demonstrate that adult skippers, especially the males, do not disperse outside of (and to higher elevations than) the habitat areas where they are produced.

Construction of an existing dam and reservoir, and road, housing, and other development has destroyed, modified and curtailed the skipper's habitat and range. Future developments, housing, road construction, off-road vehicle use, and the proposed Two Forks reservoir project, along with its associated activities, including recreational development, could further destroy, modify, and curtail the skipper's habitat

and range to the extent of endangering the species' survival.

The Pawnee montane skipper was first proposed for Federal listing as endangered on July 3, 1978 (43 FR 28938). The 1978 Amendments to the Endangered Species Act mandated a 2-year limit on finalizing listing proposals. The Service published a notice on March 6, 1979, announcing that certain proposals, including the Pawnee montane skipper proposal, would either be supplemented with regard to their critical habitats or withdrawn. The proposal expired on July 3, 1980, and was then officially withdrawn on September 2, 1980 (45 FR 58171).

Comments were received during the comment period for the 1978 proposal from the U.S. Forest Service, Bureau of Land Management, Bureau of Reclamation, Denver Water Department, The Nature Conservancy, lepidopterists, and private individuals. Comments ranged from being supportive to being opposed to the listing, while some simply provided clarifying information. Some commenters questioned the butterfly's taxonomic status and the accuracy of the distribution information commonly accepted. Scott and Stanford's work (1982) revised and updated the taxonomy, but validated and left unchanged its status as a subspecies eligible for listing, and further searches funded by the Denver Water Department in 1985 and 1986 did not locate the skipper outside the South Platte River drainage. A frequent suggestion in the comments was that the listing was motivated by political rather than biological factors. Those suggesting a political motive claimed that listing advocates only wished to prevent the construction of the Two Forks Dam.

The Service published a review of invertebrate wildlife for listing as endangered or threatened on May 22, 1984 (49 FR 21664), which included the Pawnee montane skipper as a Category 1 species. Category 1 comprises taxa for which the Service has sufficient biological information to support their being proposed to be listed as endangered or threatened. The Butterfly Specialist Group of the International Union for Conservation of Nature and Natural Resources, Species Survival Commission, recommended the Pawnee montane skipper as a high priority for listing in 1985.

A second proposed rule to list the Pawnee montane skipper was published September 25, 1986 (51 FR 34106). Comments received on this second proposal are summarized below.

Summary of Comments and Recommendations

In the September 25, 1986, proposed rule (51 FR 34106) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published on October 13, 20, 27 and November 3, 1986, in the *Rocky Mountain News*, the *Lakewood Sentinel*, and the *Castle Rock Douglas County News Press*. The *Cripple Creek Teller County Times*, and *Fairplay Flume/Park County Republican* published notices October 17, 24, 31, and November 7, 1986, which invited general public comment. No public hearing was requested or held.

During the comment period, 13 comments were received. Of the commenters that stated a position, 7 supported listing and 3 opposed it. Several commenters provided factual information regarding the species; such information has been incorporated, as appropriate, in this final rule. Support for the listing proposal was stated by the Colorado Department of Natural Resources, Environmental Protection Agency, Environmental Defense Fund, International Union for Conservation of Nature and Natural Resources, and three other interested parties. Opposition to listing the species was received from three local agencies: Denver Board of Water Commissioners, Denver Water Department, and Metropolitan Water Providers. Opposing comments concluded, in general, that habitat losses and other perceivable threats are not of sufficient magnitude to warrant listing the skipper as a threatened species, and that present management practices such as restricted public access, off-road vehicle management, and no use of chemical forest pest control measures are adequate safeguards against the foreseeable threats.

Written comments received during the comment period are discussed below. Comments disagreeing with the proposed rule can be summarized under several general issues. Discussion of these issues, and the Service's response to each, follows:

Issue 1: Commenters disagreed with the logic used to arrive at the conclusion that the skipper is a threatened species and maintained that the conclusion was not consistent with the criteria outlined

in section 3 of the Endangered Species Act. They claimed that the Pawnee montane skipper does not warrant listing as a threatened species because projected habitat losses and modifications are not of sufficient magnitude to jeopardize the continued existence of the species. They estimated the skipper habitat that would remain after construction of Two Forks Dam and Reservoir to be approximately 31 square miles, occurring as continuous habitat strips ranging from 0.25 to 1 mile wide that would extend along side slopes of the South Platte River from the vicinity of Oxyoke southward to the inlet of Cheesman Reservoir (approximately 10 miles); along slopes of West Creek (approximately 10 miles); and along the North Fork of the Platte River from Buffalo Creek westward to Cliffdale (approximately 6 miles). They considered all of this remaining habitat to be in excellent condition and largely under the control of the U.S. Forest Service and the Denver Water Department, except in the vicinity of Pine. They indicated that this, taken collectively, should be sufficient habitat to maintain the Pawnee montane skipper indefinitely, even following the construction of the Two Forks Project. They pointed out that the Service had not quantified the likelihood of its endangerment.

Service Response: In using the term "jeopardize the continued existence of the species," this comment confuses a consideration that is made during consultation on listed species (as required by section 7 of the Endangered Species Act) with the criteria used to determine if a species should be listed as threatened or endangered. The definition of a threatened species is "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Thus the Endangered Species Act does not require that the probability of endangerment be estimated numerically, but only that endangerment be likely and foreseeable. In addition to this basic definition, a determination as to whether a species should be listed is based on any one of the five factors listed in Section 4(a)(1) of the Endangered Species Act, and discussed under the "Summary of Factors" section of this rule. Determinations on the factors are made on the basis of the best scientific and commercial data available to the Service. The Service finds that the best available data support the listing of the Pawnee montane skipper as a threatened species.

Cumulative losses and modification of habitat due to continued housing and other development activities, road construction, off-road vehicle use, and the proposed Two Forks project and associated developments, including recreational activities, are of sufficient magnitude to be considered significant to the species's survival. Higher skipper population density and numbers below the proposed Two Forks Reservoir inundation line in the 1986 Pawnee montane skipper census (ERT Company 1986) suggest that the habitat there is better or more productive than habitat above the proposed inundation line, and the possibility remains that dispersal of adult skippers, especially upward dispersal of males, may make the distribution of adults an overestimate of the real distribution of productive habitat. The water barrier created by Two Forks would separate the remaining habitat into two smaller, discontinuous portions or "islands." This would increase the chance of population islands being lost to stochastic (random) events, limit skipper movements, and decrease gene flow among population units. Possible microclimatic effects of the proposed reservoir on skipper habitat nearby are unknown, but might occur, and be either deleterious or beneficial.

Issue 2: Some commenters claimed the proposed action falls short of fulfilling the intent of Congress in passing the Endangered Species Act. They noted that the Act empowered the Service to take the necessary steps to protect the ecosystems that support a threatened or endangered species, and that courts have interpreted this language to create an affirmative duty on the part of the agency to preserve the listed species, not to merely avoid elimination of the species. They advised the Service to take the following steps to adequately ensure the perpetuation of this species: (1) List the Pawnee montane skipper as an endangered species, not a threatened species; (2) designate critical habitat for this species; and (3) acquire lands supporting habitat critical to survival of this species.

Service Response: The Pawnee montane skipper is not being listed as an endangered species since existing habitat conditions are such that the species is not currently in danger of extinction. Critical habitat is not being designated because the species is subjected to some collecting pressure and publication of exact locations of the species would increase collecting pressures.

The skipper's habitat is mostly administered/owned by the U.S. Forest

Service and the Denver Water Department. The U.S. Bureau of Land Management manages some small holdings within the species' range. Federal agencies are mandated to manage for the conservation (which includes recovery) of listed species. The Denver Water Department will be required to abide by the requirements of the Endangered Species Act if the Two Forks project is approved since the agencies that have authority to issue permits for the project must insure that the project is not likely to jeopardize the continued existence of the species. The Service will prepare a recovery plan for the skipper. Land acquisition and management of such lands for the preservation of the skipper have been identified as potential recovery activities.

Issue 3: Commenters questioned whether recreational development, off-road vehicle use, invasion of exotic plants, pine bark beetle spraying, and collection/vandalism are significant threats to the Pawnee montane skipper as indicated in the proposed rule. They pointed out that Pawnee montane skippers survived earlier logging disturbance, that they still occur in one well-used forest campground, that use of off-road vehicles has been controlled by the Forest Service and areas eroded by use have been closed, that exotic plants have not made serious inroads into the native vegetation of this area, that pest control spraying has not been used, and that there is little reason to expect collection and/or vandalism against this species.

Service Response: These threats were included in the proposal as factors that may affect the skipper and that may be expected to increase. The Service agrees that their significance will be difficult to determine and unlikely to equal the significance of the threat of habitat loss or degradation. These items should be considered as a part of the recovery process by land managing agencies in order to insure optimum conditions for the skipper.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Pawnee montane skipper should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be

determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Pawnee montane skipper (*Hesperia leonardus montana*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Pawnee montane skipper occurs in only one restricted area. Past habitat loss or degradation probably occurred when Cheesman Reservoir was constructed and when residential and commercial communities within the skipper's range were developed. No early distribution or range information exists to determine to what extent this may have occurred. The habitat has also been impacted by road construction and housing and other development activities that are anticipated to continue. Some off-road vehicle use occurs within the butterfly's habitat and results in accelerated soil erosion or destruction of skippers and/or their food plants. The land managing agencies have acted to limit this activity, and, taken alone, its impact is minor.

Additionally, construction of the proposed Two Forks Dam and Reservoir and associated roads and recreational facilities, if completed as planned, will result in elimination of individual skippers and portions of the species' habitat. A contractor's estimate of suitable habitat for the skipper lost through inundation directly (ERT Company 1986) is about 22 percent of an estimated 37.9 square miles of suitable habitat. Population estimates made in the 1986 flight season (ERT Company 1986) placed only about 19 percent of the skippers in the inundation zone early in the season when males predominated, but this increased to about 33 percent later, when females were more numerous and the estimated density and total numbers of adult skippers had doubled over the earlier period.

Losses associated with construction activities (roads, access points, maintenance facilities, etc.) and recreational development associated with Two Forks Reservoir or for other purposes could further degrade or even eliminate the habitat of the Pawnee montane skipper beyond the inundation losses. Recreational use of the area would increase, and increased trampling from foot traffic or off-road vehicles could result in the destruction of skippers or the host and nectar plants at certain stages of their life cycles. Residential development within the skipper's range would also be expected

to increase if the proposed reservoir is constructed.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Collection is not as large a problem for skippers as it is for some butterfly groups. Some collection of this species has occurred, but, to date, it has been primarily for scientific studies. With increased public awareness of its rarity, the Pawnee montane skipper could become more sought after by collectors.

C. *Disease or predation.* Various predators and parasitoids are considered to hold insect populations under "natural control," and several are known to feed on various *Hesperia* butterflies; however, no such agents are believed to pose a serious threat to the species' populations or continued existence. Opler (1986) observed that spiders that frequent *Liatris* plants do prey on Pawnee montane skippers.

D. *The inadequacy of existing regulatory mechanisms.* The Pawnee montane skipper is not presently protected by any State or Federal law. Listing under the Endangered Species Act would provide needed protection through recovery and interagency cooperation provisions.

E. *Other natural or manmade factors affecting its continued existence.* Mountain pine beetle (*Dendroctonus ponderosae*) and spruce bud worm (*Choristoneura occidentalis*) infestations occur within the skipper's habitat. The use of insecticides to control these pests or other pests within the area where the Pawnee montane skipper occurs could result in the loss of skipper individuals or populations. However, insecticides are not presently being applied aerially to control mountain pine beetles or spruce bud worms within the skipper's range. At this time no known losses occur due to insecticides.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Hesperia leonardus montana* as a threatened species. This species fits the definition of threatened better than that of endangered since existing habitat conditions are such that the species is not currently in danger of extinction. The species has a restricted range, and portions of its habitat will be eliminated by the proposed Two Forks Dam and Reservoir and associated facilities. Its habitat has already been impacted by road construction, housing and other

development activities. Critical habitat is not being determined for reasons explained in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Collection could become a problem for this species through increased publicity if critical habitat maps were published as part of the listing process. All the involved agencies have been informed of the location of the populations of the Pawnee montane skipper and the importance of protecting this species' habitat. No further notification benefits would accrue from designating critical habitat. Protection of the species' habitat and its proper management will be addressed through the recovery process and through section 7 consultations. Therefore, it would not be prudent to determine critical habitat for the Pawnee montane skipper at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical

habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Pawnee montane skipper occurs on lands administered by the U.S. Forest Service (Pike National Forest) and U.S. Bureau of Land Management. The U.S. Army Corps of Engineers, Forest Service, and Bureau of Land Management are the Federal permitting agencies for Two Forks Reservoir. The Service will work with the three Federal agencies and all other involved parties to achieve protection for the skipper. The section 7 Interagency Regulations (50 CFR 402.10) require each Federal agency to confer with the Service on any action that is likely to jeopardize the continued existence of any proposed species. By letter dated May 4, 1987, the Corps of Engineers requested such a conference on the proposed Two Forks Project.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are

available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

References Cited

- ERT Company. 1986. 1986 Pawnee montane skipper field studies. Prepared for the Denver Water Department, Denver, Colorado. November 1986. 40 pp.
- Getches, D.H. 1986. Letter of comment on the proposed rule. Dated December 11, 1986. 2 pp.
- Keenan, L.C., R.E. Stanford, S.L. Ellis, and B. Drummond. 1986. Status report on: Pawnee montane skipper. Prepared for Denver Water Department, Denver, Colorado. February 1986. 49 pp.
- McGuire, W.W. 1982. New oviposition and larval host plant records for North American *Hesperia* (Rhopalocera:Hesperiidae). Bulletin of the Allyn Museum, Number 72. 6 pp.
- Opler, P.A. 1986. Letter to Fish and Wildlife Service, dated November 6, 1986. U.S. Fish and Wildlife Service, Office of Information Transfer, Fort Collins, Colorado. 2 pp.

- Scott, J.A. 1986. Letter to Office of Endangered Species. March 5, 1986. 3 pp.
- Scott, J.A. and R.E. Stanford. 1982. Geographic variation and ecology of *Hesperia leonardus* (Hesperiidae). *Journal of Research on the Lepidoptera* 20(1):18-35.
- Skinner, H. 1911. New species or subspecies of North American butterflies. *Entomological News* 22:412-413.

Author

The primary author of this final rule is Dr. James L. Miller of the Service's Denver Regional Office staff (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend §17.11(h) by adding the following, in alphabetical order under Insects, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

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(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
INSECTS							
Skipper, Pawnee montane.....	<i>Hesperia leonardus montana</i>	U.S.A. (CO).....	NA.....	T.....	289.....	NA.....	NA.....

Dated: September 21, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-22157 Filed 9-24-87; 8:45 am]

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